

Thomas, Thomas, Armstrong & Niesen
Attorneys and Counsellors at Law

ORIGINAL

**DOCUMENT
FOLDER**

SUITE 500
212 LOCUST STREET
P. O. BOX 9500
HARRISBURG, PA 17108-9500

REGINA L. MATZ

Direct Dial: (717) 255-7622
E-mail: rmatz@ttanlaw.com

www.ttanlaw.com

FIRM (717) 255-7600

FAX (717) 236-8278

April 7, 2005

CHARLES E. THOMAS
(1913 - 1998)

SECRETARY'S BUREAU

2005 APR - 7 PM 4: 09

RECEIVED

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

In re: Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund
Docket No. I-00040105

Dear Secretary McNulty:

Enclosed for filing on behalf of the Rural Telephone Company Coalition in the above-referenced proceeding is an Answer of the Rural Telephone Company Coalition to Motion of Wireless Carriers for Determination That the Commission Lacks Jurisdiction to Require CMRS Providers to Contribute to the Funding of a Pennsylvania Universal Service Fund, and for Bifurcation or Certification for Immediate Commission Review. Copies of the Answer have been served in accordance with the attached Certificate of Service.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By


Regina L. Matz

Enclosure

cc: Certificate of Service

KJR

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED
2005 APR -7 PM 4:09
PENNSYLVANIA PUBLIC
UTILITY COMMISSION
SECRETARY'S BUREAU

Investigation Regarding Intrastate :
Access Charges and IntraLATA :
Toll Rates of Rural Carriers, and :
the Pennsylvania Universal Service :
Fund :

Docket No. I-00040105

DOCUMENT
FOLDER

DOCKETED

MAY 2 2005

ANSWER OF THE RURAL TELEPHONE COMPANY COALITION
TO MOTION OF WIRELESS CARRIERS FOR DETERMINATION
THAT THE COMMISSION LACKS JURISDICTION TO REQUIRE
CMRS PROVIDERS TO CONTRIBUTE TO THE FUNDING OF A
PENNSYLVANIA UNIVERSAL SERVICE FUND, AND FOR BIFURCATION
OR CERTIFICATION FOR IMMEDIATE COMMISSION REVIEW

AND NOW, comes the Rural Telephone Company Coalition¹ ("RTCC"),
through their counsel, and answers the Motion of Wireless Carriers for
determination that the Commission lacks jurisdiction to require CMRS providers to
contribute to the funding of a Pennsylvania Universal Service Fund, and for
bifurcation or certification for immediate Commission review, as follows:

¹The RTCC consists of the following rural incumbent local exchange carriers: ALLTEL Pennsylvania, Inc., Armstrong Telephone Company - PA, Armstrong Telephone Company-North, Bentleyville Communications Corporation, d/b/a The Bentleyville Telephone Company, Buffalo Valley Telephone Company, Citizens Telephone Company of Kecksburg, Commonwealth Telephone Company, Conestoga Telephone and Telegraph Company, Denver and Ephrata Telephone and Telegraph Company d/b/a D&E Telephone Company, Deposit Telephone Company, Frontier Communications of Breezewood, Inc., Frontier Communications of Canton, Inc., Frontier Communications of Lakewood, Inc., Frontier Communications of Oswayo River, Inc., Frontier Communications of Pennsylvania, Inc., The Hancock Telephone Company, Hickory Telephone Company, Ironton Telephone Company, Lackawaxen Telecommunications Services, Inc., Laurel Highland Telephone Company, Mahanoy & Mahantango Telephone Co., Marianna & Scenery Hill Telephone Company, The North-Eastern Pennsylvania Telephone Company, North Penn Telephone Company, North Pittsburgh Telephone Company, Palmerton Telephone Company, Pennsylvania Telephone Company, Pymatuning Independent Telephone Company, South Canaan Telephone Company, Sugar Valley Telephone Company, Venus Telephone Corporation, West Side Telephone Company and Yukon-Waltz Telephone Company.

1. In sum, and as more fully set forth below, it is the position of the RTCC that there is no compelling reason for the Pennsylvania Public Utility Commission ("Commission") to alter the Pennsylvania Universal Service Fund ("PA USF") at this time, there are many compelling reasons to maintain the status quo, the Commission should not act to alter the PA USF as a result of this investigation, but if the Commission were to do so the Commission has authority to require wireless carriers to contribute to the PA USF.

2. In their Motion, the Wireless Carriers submit that because the Commission is authorized to regulate "public utilities," and because CMRS carriers are specifically excluded from the definition of "public utility" in the Pennsylvania Public Utility Code, the Commission has no jurisdiction to require wireless carriers to support the PA USF. Wireless Carriers' Motion at 4-6. The Wireless Carriers take this position notwithstanding the mandate of the federal Telecommunications Act of 1996 ("TCA-96") to preserve universal service on both the state and federal levels, and the authority conferred all states under TCA-96 to take steps to implement that mandate. Wireless Carriers' Motion at 6. In that regard, the Wireless Carriers contend that the broad universal service scheme set out in TCA-96 encompassing wireless carriers afforded only the *states* the authority to adopt universal service regulations and not the *state commissions*. Wireless Carriers' Motion at 6.

3. The RTCC does not dispute the fact that under the Pennsylvania Public Utility Code, commercial mobile radio service ("CMRS") providers who furnish

mobile domestic cellular radio telecommunications service are specifically excluded from the definition of "public utility." 66 Pa.C.S. §102 (definition of "public utility," subsection (2)(iv), added per Act 241 of 1984). The RTCC would further agree, therefore, that as a general rule, the Commission has no authority to "supervise and regulate" CMRS providers as public utilities. 66 Pa.C.S. §501(b).

4. However, the RTCC submits that including CMRS carriers in the body of telecommunications service providers that, as a matter of public policy and as permitted under state and federal law, should share responsibility for ensuring the continued availability of universal telecommunications service does not run afoul of the provision that CMRS carriers are not to be regulated and supervised as public utilities. Requiring CMRS carriers to share in the responsibility for continued universal service is appropriate in light of the facts that (1) CMRS providers are an increasingly larger provider of telecommunications services; (2) CMRS providers benefit greatly from reduced access charges; and (3) the reduction of access charges and making explicit the local service support that was previously implicitly embedded in those access charges is a primary reason for the need for a state USF. Inclusion of CMRS carriers as contributors to the PA USF is a public policy decision authorized by state and federal law that is not tantamount to regulating the rates and services of those providers as public utilities. Accordingly, the RTCC submits, the state and federal statutory provisions providing for universal service funding and the state provision excluding CMRS carriers from regulation as public

utilities can and do co-exist. If not, however, it is the state exclusion which must give way to the federal mandate.

5. However, as stated above, notwithstanding the Commission's authority to include CMRS carriers in state universal service funding responsibilities, it is emphasized that it remains the position of the RTCC that the Commission should maintain the status quo of the present PA USF, including the exclusion of CMRS carriers, until matters on the federal level are further developed by the FCC in its Intercarrier Compensation Investigation, which federal investigation in all likelihood will greatly impact, if not render moot, the issue of contributions and contributors on a state level .

A. Pennsylvania Statutory Law

6. The maintenance of universal service on the state level was a stated policy goal expressed by statute in 1993 in Section 3001 of the original Chapter 30, 66 Pa.C.S. §3001. Though that chapter and that section were subject to sunset, the General Assembly nevertheless reaffirmed this state's commitment to continue universal service without limitation through the enactment of replacement legislation for Chapter 30, Act 183 of 2004, 66 Pa.C.S. §§3011-3019 ("Act 183"). Act 183 continues the maintenance of universal service as an important public policy goal of this Commonwealth, first set out in 1993 and reaffirmed in 2004, and authorizes the Commission to establish such additional requirements as is necessary to insure the protection of consumers.

7. Section 3011(2), 66 Pa.C.S. §3011(2), provides that it is the policy of the Commonwealth to:

(2) Maintain universal telecommunications service at affordable rates while encouraging the accelerated provision of advanced services and deployment of a universally available, state-of-the-art, interactive broadband telecommunications network in rural, suburban and urban areas, including deployment of broadband facilities in or adjacent to public rights-of-way abutting public schools, including the administrative offices supporting public schools, industrial parks and health care facilities.

8. In fulfilling its responsibilities, including the maintenance of telecommunications service at affordable rates, Act 183 also provides the Commission authority, limited by Section 3015(e) which has no applicability here, to “establish such additional requirements as are consistent with this chapter as the Commission determines to be necessary to ensure the protection of customers.” 66 Pa.C.S. §3019(b)(3).

9. Accordingly, this Commission is clearly vested under state law with the responsibility and authority to ensure continued universal telecommunications service. Further, so long as the exercise of that authority is not tantamount to the “regulation” of CMRS providers as public utilities, the Commission is not prohibited from exercising this responsibility on an equitable and nondiscriminatory basis among all providers of telecommunications services.

B. Federal Statutory Law – The Telecommunications Act of 1996

10. TCA-96 provides unambiguous authority for this Commission to require all providers of telecommunications services to contribute to a state

universal service fund. Section 254 of TCA-96 provides, in pertinent part, as follows:

(b) **UNIVERSAL SERVICE PRINCIPLES.**—The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

(1) **QUALITY AND RATES.**—Quality services should be available at just, reasonable, and affordable rates.

(2) **ACCESS TO ADVANCED SERVICES.**—Access to advanced telecommunications and information services should be provided in all regions of the Nation.

(3) **ACCESS IN RURAL AND HIGH COST AREAS.**—Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

(4) **EQUITABLE AND NONDISCRIMINATORY CONTRIBUTIONS.**—*All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.*

(5) **SPECIFIC AND PREDICTABLE SUPPORT MECHANISMS.**—There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.

Section 254 of TCA-96, 47 U.S.C. §254 (emphasis added).

11. Telecommunications service is defined in TCA-96 as follows:

(51) **TELECOMMUNICATIONS SERVICE.**—The term ‘telecommunications service’ means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, ***regardless of the facilities used.***

Section 3 of TCA-96, 47 U.S.C. §153 (emphasis added).

12. Similar to the Pennsylvania Public Utility Code, TCA-96 also provides broad powers necessary to protect the public interest as consistent with the act.

(7) **ADDITIONAL PRINCIPLES.**—Such other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act.

Section 254 of TCA-96, 47 U.S.C. §254.

13. Finally, TCA-96 *specifically prescribes* state authority to adopt regulations consistent with the federal objective of preserving *and advancing* universal service as an obligation of *every telecommunications carrier*, including CMRS carriers.

(f) **STATE AUTHORITY.**—A State may adopt regulations not inconsistent with the Commission’s rules to preserve and advance universal service. ***Every telecommunications carrier that provides intrastate telecommunications services shall contribute***, on an equitable and nondiscriminatory basis, ***in a manner determined by the State to the preservation and advancement of universal service in that State.*** A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.

Section 254(f) of TCA-96, 47 U.S.C. §254(f) (emphasis added and in original).

14. Clearly, under authority of Section 254(f) of TCA-96, states, interpreted in Pennsylvania as being the state Commission,² have authority to adopt regulations to provide for additional standards to preserve and advance universal service within each state and to assess responsibility fairly and equitably among all providers of telecommunications services no matter the facilities used – therefore including CMRS carriers – to ensure the continuation of universal service. And the General Assembly of the Commonwealth of Pennsylvania as recently as November 30, 2004, through the passage of Act 183 and specifically Sections 3011 and 3019 of that Act, authorized the Commission to do what is necessary to ensure the continued availability of universal service.

15. In sum, neither state nor federal law prohibits the Commission from including CMRS carriers in universal service responsibilities. State law, in its exclusion of CMRS carriers from the definition of public utility, merely precludes this Commission from regulating CMRS carriers as public utilities. Federal law clearly provides that all providers of telecommunications services regardless of the facilities used, therefore including CMRS carriers, shall be included in a regulator's assessment of obligations to ensure continued universal service. Finally, and most importantly, federal law clearly empowers states to determine their own definitions

²State statutes in Section 501 and Chapter 30 conferring broad powers upon the Commission and promoting the public policy of universal service, and federal statutes in Section 254 of TCA-96 conferring upon states the authority to develop a state USF, confer upon the *Commission* the power to establish a state USF. *Bell Atlantic-Pennsylvania v. PA PUC*, 763 A.2d 440, 497 (Pa. Cmwlth. 2000), *vacated in part on other grounds sub nom. MCI WorldCom, Inc. v. PA PUC*, 844 A.2d 1239 (Pa. 2004).

and standards to preserve and advance universal service within each state, which the General Assembly in November 2004 reaffirmed that this Commission should do.

C. Supporting Case Law

16. In the case of *AT&T Corp. and AT&T Communications of Texas LP, v. Public Utility Commission of Texas, et al.*, 373 F.3d 641 (5th Cir. 2004) (“*AT&T Corp.*”) the Court addressed the wide-reaching implications of Section 254 as that statute empowers both state and federal regulators. As the Court stated therein:

The TA96 amended the Telecommunications Act of 1934 to encourage widespread competition among telecommunications providers and at the same time provide universal telecommunications service to all Americans. The new act empowered both States and the Federal Communications Commission (“FCC”) to define universal service and create universal service support programs. Both the FCC and the States were given the power to collect assessments from telecommunications carriers in order to subsidize these programs, particularly services to rural, high cost, and low income users.

AT&T Corp., 373 F.3d at 641 (citation to and quotation from Section 251(d) omitted; emphasis added).

17. The Court continued with an analysis of the statutory authority granted states under Section 254(f) of TCA-96 to assess contributions from carriers providing intrastate services, as follows:

Congress empowered States to collect funds from carriers providing intrastate telecommunications services. As with the federal universal service scheme, the assessment must be equitable and nondiscriminatory. Furthermore the state universal service mechanisms cannot burden or rely upon the federal universal service system.

Id. at 641 (statutory citations to and quotations from Section 254(f) of TCA-96 omitted; emphasis in original).

18. The Court recognized that the TCA-96 clearly set up a dual system of state and federal authority to assess intrastate and interstate service providers to fund universal service programs.

This dual universal service scheme allows the FCC to assess interstate service providers to fund federal universal service programs and allows the States to assess intrastate providers to fund the state universal service programs.

Id. CMRS carriers are clearly included. The only restriction is that a state system not burden or rely on the federal system.³

19. However, even if for the sake of argument the imposition of state universal service requirements on CMRS carriers were deemed to be tantamount to the regulation of the rates and services of those carriers, which the RTCC contends is not the case, the broad federal universal service statutory scheme set

³The authority of the Texas PUC to assess any an all telecommunications carriers providing intrastate services for universal service funding was *not* at issue in *AT&T Corp.* What was at issue was the state of Texas' assessment of multijurisdictional carriers on both their *interstate* and *intrastate* revenues. The Court found that while the state had authority to assess telecommunications carriers based upon their *intrastate* revenues, the state could not assess multijurisdictional carriers on both their *interstate* and *intrastate* revenues as such double assessment of *interstate* revenues put multijurisdictional carriers at a competitive disadvantage. *AT&T Corp.*, 373 F.3d at 647. Pennsylvania's USF, based upon *intrastate* revenues only, would not conflict with or unduly burden the federal USF scheme. Further, while the Texas state statutes are not identical to the Pennsylvania Public Utility Code, Texas, like Pennsylvania, does not regulate wireless carriers as public utilities. The statutory scheme in Texas is similar to that of Pennsylvania in that in Texas CMRS providers are generally excluded from the traditional definition of public utility. In Title 2 of the Texas Utilities Code, the Public Utility Regulatory Act ("PURA"), CMRS carriers are not included within the definition of "telecommunications utility" and are specifically excluded from most substantive regulatory chapters of PURA such as Chapter 51, regulating telecommunications utilities, Chapters 17 and 64, Customer Protection, and Chapter 55, Regulation of Telecommunications Services. See Texas PURA at §§51.003(5), 51.002(10), 51.002(11). As a provider of telecommunications services, CMRS carriers are required to contribute to the Texas USF pursuant to Chapter 56, §56.022, of PURA.

forth in Section 254 clearly trumps the narrow state provision excluding CMRS carriers from the definition of public utilities as an interpretation of state law that is inconsistent with and stands in the way of the universal services goals of TCA-96.

20. As the Court in *AT&T Corp.* recognized, preemption of state law occurs when Congress expressly preempts state law, when the federal regulatory scheme is so pervasive as to allow preemption to be inferred, and when state law conflicts with federal law or its purpose. *AT&T Corp.*, 373 F.2d at 645 (citations omitted).

21. In Pennsylvania, the General Assembly in 1984 carved for CMRS carriers a specific and narrow statutory exclusion from the Commission's general regulatory oversight of public utilities. This statutory exclusion predated the breakup of the AT&T monopoly in the late 1980's, predated the access reform brought about on the state and federal levels in the 1990's with the passage of Chapter 30 and TCA-96, and, in general, predated the vast evolution the telecommunications industry has undergone in the 20 years since that exclusion was enacted. Nonetheless, consistent with section 102 as amended in 1984, this Commission may not regulate the service and rates of CMRS providers as public utilities, and since 1984, CMRS carriers have not been burdened by the everyday regulatory authority the Commission exercises over public utilities.

22. However, in 1993, and again in 2004, the General Assembly provided the Commission broad and unrestricted authority to establish a state universal service fund. Further, in 1996, Congress enacted a broad federal statute that specifically *included* participation of CMRS carriers as telecommunications providers

and specifically authorized both state and federal universal service schemes with the only restriction that the state scheme not burden or rely upon the federal scheme. Without question Congress authorized states to collect universal service contributions from all providers of telecommunications services to assure continued universal service. To interpret the Pennsylvania Public Utility Code's preclusion of Commission regulation of CMRS providers as public utilities as preclusion of Commission authority to require all providers of telecommunications services to contribute to a state USF would clearly stand as an "obstacle to the accomplishment and execution of the full purposes and objectives of Congress," and must fall for universal service purposes. *AT&T Corp.*, 373 F.2d at 645, *citing Pacific Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'm.* 461 U.S. 190 (1983).

23. Consequently, although this Honorable Commission cannot regulate CMRS providers as public utilities, it is clearly authorized to develop universal support mechanisms and to determine which providers of telecommunications services, regardless of facilities used, should contribute into the Fund.

C. Pennsylvania Case Law

24. The Wireless Carriers cite the Commonwealth Court's Order in *Bell Atlantic-Pennsylvania v. PA PUC*, 763 A.2d 440, 497 (Pa. Cmwlth. 2000), *vacated in part on other grounds sub nom. MCI WorldCom, Inc. v. PA PUC*, 844 A.2d 1239 (Pa. 2004) ("*Bell Atlantic*") for the proposition that the Pennsylvania Public Utility Code excludes wireless carriers from the Commission's jurisdiction for all purposes. However, the issue whether the Commission is *precluded* from requiring CMRS

carriers to contribute to the PA USF was not resolved by the Court in that case as that issue, as opposed to the issue whether the Commission *may choose* to exclude them, was not squarely presented to the Court, and the Commission's exclusion of wireless carriers as contributors to the present PA USF was found not to have been properly preserved for appeal.

25. Further, as the Court's discussion of Verizon Pennsylvania, Inc.'s broad challenges to the PA USF in that case reveals, the Commission's ability to establish a state USF and determine contributors thereto is, as argued by the RTCC above, founded in both state and federal law. The Court stated, as follows:

The PUC's position is to distinguish the *Process Gas* decision by reliance upon Chapter 30's declaration of policy to maintain telecommunication services at affordable rates, and to ensure that customers pay only reasonable charges for local exchange telecommunications services. As authority for specific implementation of those policies, the PUC cites 66 Pa.C.S. § 3009(b) and subsection (3) thereof, providing that the PUC retains the following powers and duties relating to the regulation of all local exchange telecommunications companies and interexchange carriers and listing among those powers:

(3) The commission shall establish such additional requirements and regulations as it determines to be necessary to insure the protection of consumers.

Bell [now Verizon Pennsylvania, Inc.] asks that we deem that language to be too general to authorize the Universal Service Fund and a requirement of contributions to it, arguing that it appears to refer only to protection against fraud and unfair practices, rather than the protection of rate costs through a universal service fund process. The PUC in response quotes the Pennsylvania Supreme Court in *Process Gas*, 511 A.2d at 1320 for the proposition that the court is not limited to the mere letter of the law, but must look to the underlying purpose of the statute and its reasonable effect, citing *Gilligan*, 492 Pa. at 97, 422 A.2d at 490.

The PUC also contends that the federal law is very clear in supporting its position to mandate a universal service fund, and contributions to it, citing Section 254(f) of TA 96, which states:

STATE AUTHORITY—A State may adopt regulations not inconsistent with the commission's rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications service shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State.

The federal section concludes with a sentence negating any state regulations which rely on or burden federal universal support systems, an aspect that has not been raised here.

To Bell's view that the term State in TA 96 refers only to state legislative action, not to state regulatory commission actions, the PUC cites the comprehensive grant of general powers to the commission in 66 Pa.C.S. § 501 as constituting an effective legislative delegation of the requisite powers to the PUC.

The conclusion here must be that the state and federal statutes do confer upon the PUC the power to establish a Universal Service Fund, as Bell and other 1649 Petition signers requested the PUC to do.

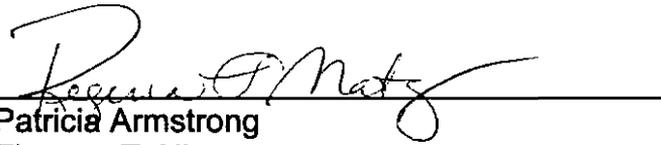
Bell Atlantic, 763 A.2d at 496-97 (emphasis added).

26. Further, in response to the contention of GTE (now Verizon North) that federal law required states to include wireless carriers as contributors to a state USF, although finding the issue not preserved for appeal, the Court agreed that the decision to craft a state USF with or without CMRS carrier contributions is "optional with state commissions." *Id.* at 499-500.

WHEREFORE, the RTCC respectfully requests that Your Honor conclude that the Commission has authority, should it choose to exercise it, to find CMRS carriers are subject to the universal service requirements of both TCA-96 and Act

183, not as public utilities but as prominent providers of telecommunications services within the Commonwealth that benefit substantially from reductions to access charges, and may be required, should the Commission so choose, to contribute to the Pennsylvania Universal Service Fund. However, while having the authority to do so, the RTCC respectfully requests that the Commission not exercise that authority at this time, but rather maintain the status quo pending further development of universal service and intercarrier compensation issues on the federal level.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Regina L. Matz", is written over a solid horizontal line.

Patricia Armstrong
Thomas T. Niesen
Regina L. Matz
Michael L. Swindler

Attorneys for
The Rural Telephone Company Coalition

THOMAS, THOMAS, ARMSTRONG & NIESEN
212 Locust Street, Suite 500
P. O. Box 9500
Harrisburg, PA 17108-9500

DATE: April 7, 2005

F:\CLIENTS\Utility\Rural Company Coalition\USF Access III\Documents\RTCC Answer to Wireless Carriers' Motion.wpd

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation Regarding Intrastate Access : Docket No. I-00040105
Charges and IntraLATA Toll Rates of :
Rural Carriers, and the Pennsylvania :
Universal Service Fund :

RECEIVED
2005 APR -7 PM 4: 09
PENNSYLVANIA PUBLIC
UTILITY COMMISSION
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of April, 2005, served a true and correct copy of the foregoing document upon the persons and in the manner listed below:

VIA E-MAIL AND FIRST CLASS MAIL, POSTAGE PREPAID

Philip F. McClelland
Senior Assistant Consumer Advocate
Joel H. Cheskis
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923

Steven C. Gray, Esquire
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

Julia A. Conover
Suzan Detusk Paiva
Verizon Pennsylvania Inc.
Verizon North
1717 Arch Street, 32N
Philadelphia, PA 19103

Robert V. Eckenrod, Esquire
Office of Trial Staff
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
2nd Floor West
P.O. Box 3265
Harrisburg, PA 17105-3265

Michelle Painter, Esquire
MCI
22001 Loudoun County Parkway, C2-2-105
Lashburn, VA 20147

Zsuzsanna E. Benedek, Esquire
240 North Third Street
Suite 201
Harrisburg, PA 17101

Bradford M. Stern, Esquire
Martin C. Rothfelder, Esquire
Rothfelder Stern, L.L.C.
625 Central Avenue
Westfield, NJ 07090

Christopher M. Arfaa
Susan M. Roach
Drinker Biddle & Reath LLP
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103

Kristin Smith
Qwest Communications Corporation
1801 California Street
Suite 4900
Denver, Colorado 80202

John F. Povilaitis
Ryan, Russell, Ogden & Seltzer LLP
Suite 101
800 North Third Street
Harrisburg, PA 17102-2025

Daniel Clearfield, Esquire
Alan C. Kohler, Esquire
Wolf Block Schorr Solis-Cohen LLP
212 Locust Street, Suite 300
Harrisburg, PA 17101

Jennifer A. Duane, Esquire
Sprint Communications Company, L.P.
401 9th Street, NW
Suite 400
Washington, DC 20004


Regina L. Matz



ORIGINAL

Zsuzsanna E. Benedek
Attorney

240 North Third Street, Suite 201
Harrisburg, PA 17101
Voice 717 236 1385
Fax 717 236 1389
sue.e.benedek@mail.sprint.com

April 7, 2005

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

**DOCUMENT
FOLDER**

**Re: Investigation Regarding Intrastate Access Charges and
IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania
Universal Service Fund – Docket No. I-00040105**

Dear Secretary McNulty:

On behalf of The United Telephone Company of Pennsylvania *d/b/a* Sprint (hereinafter "Sprint") enclosed please find for filing an original and three (3) copies of Sprint's Answer to the Motion of Wireless Carriers for Determination that the Commission Lacks Jurisdiction to Require CMRS Providers to Contribute to the Funding of a Pennsylvania Universal Service Fund and Bifurcation or Certification for Immediate Commission Review.

A copy of this Answer has been served upon all parties on the attached Certificate of Service. Should you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

Sue Benedek

ZEB/jh

cc: The Honorable Susan Colwell (*via hand delivery*)
All Parties on Certificate of Service (*via first-class mail*)

KJR

2005 APR - 7 PM 2: 26
PA PUC
SECRETARY'S BUREAU

RECEIVED

**DOCUMENT
FOLDER**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation Regarding Intrastate Access)
Charges and IntraLATA Toll Rates of Rural) Docket No. I-00040105
Carriers, and the Pennsylvania Universal)
Service Fund)
)

RECEIVED
2005 APR -7 PM 2:26
SECRETARY'S BUREAU

**ANSWER OF
THE UNITED TELEPHONE COMPANY OF PENNSYLVANIA *d/b/a* SPRINT
TO THE MOTION OF WIRELESS CARRIERS**

On March 25, 2005, Omnipoint Communications Inc. *d/b/a* T-Mobile, Omnipoint Communications Enterprises LLC *d/b/a* T-Mobile, Voicestream Pittsburgh LP *d/b/a* T-Mobile, Nextel Communications, Inc. and Cellco Partnership *d/b/a* Verizon Wireless (collectively "Wireless Carriers") filed a Motion for Determination that the Commission Lacks Jurisdiction to Require CMRS Providers to Contribute to the Funding of a Pennsylvania Universal Service Fund, and for Bifurcation or Certification for Immediate Review (hereinafter "Motion").¹ The Wireless Carriers filed the instant Motion pursuant to statutory provisions governing declaratory orders and the authority of the presiding officer,² along with the Commission regulations.³

The United Telephone Company of Pennsylvania *d/b/a* Sprint (hereinafter "Sprint") submits this Answer and, in support thereof, avers as follows:

DOCKETED
MAY 2 2005

¹ Per e-mail dated March 29, 2005, Judge Colwell determined a due date of April 7, 2005 for Answers and Objections.

² 66 Pa. C.S. §§ 331(d) and (f).

³ 52 Pa. Code § 5.103.

ANSWER

The Wireless Carriers' Motion arises from certain questions raised by the Commission in its Order instituting this generic investigation.⁴ In relevant part, the Commission's December 20, 2004 Order provides as follows:

(e) If the Fund continues beyond December 31, 2004, should wireless carriers be included in the definition of contributors to the Fund? If included, how will the Commission know which wireless carriers to assess? Will the Commission need to require wireless carriers to register with the Commission? What would a wireless carrier's contribution be based on? Do wireless companies split their revenue bases by intrastate, and if not, will this be a problem?

Clearly, the questions posed in the Commission's Order necessitate resolution of the purely legal issue of Commission's assumed jurisdiction over wireless carriers. Sprint concurs that this jurisdictional issue should be addressed first before any litigation ensues in this proceeding.

Specifically, without addressing the substantive merits of the arguments made and cases cited in the Motion, the questions identified by the Commission concerning wireless carriers and/or services raise evidentiary issues as to who should contribute to the Pennsylvania USF. This "contribution" issue implicates a majority of the issues identified in the question set forth in the Commission's December 20, 2004 Order. For example, the base of "contributors" necessarily impacts the future of the Pennsylvania USF, the rates to be impacted by any changes to the existing USF, the changes in USF disbursements, the changes in USF contributions and methodology, and necessary Commission action to implement all such matters. By addressing the wireless jurisdictional issue upfront in this proceeding, the litigating parties can efficiently develop a full evidentiary record as to the

appropriate policy and regulatory response for all USF-related issues. Conversely, if the evidentiary record does not have clear direction upfront identifying the base of USF contributors, then the record will be unclear (at a minimum) as to the important issues and questions identified in the Commission's December 20, 2004 Order. Without first resolving the wireless jurisdictional issue, parties, the presiding Judge and the Commission will expend resources essentially litigating a threshold jurisdictional issue, rather than focusing upon critical issues concerning the Pennsylvania USF.

Thus, Sprint supports the Motion's request that the wireless jurisdictional question should be addressed upfront in this case through interlocutory review. Because the wireless jurisdictional question greatly impacts litigation of this proceeding, a stay of the procedural schedule is needed in order to afford the Commission adequate opportunity to address the wireless jurisdictional issue on interlocutory review.

While Sprint supports the Motion's request for resolution via interlocutory review, Sprint opposes the Motion's alternative request for bifurcation of the wireless jurisdictional issue. Simply stated, the proposal for "bifurcation"⁵ is inconsistent with judicial economy and is contrary to the development of an evidentiary record that fully responds to the issues identified in the Commission's December 20, 2004 Order initiating this generic investigation.

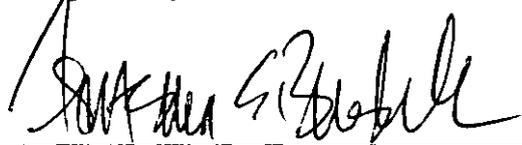
⁴ *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105, Order Entered December 20, 2004.

⁵ The Motion requests that the Presiding Officer "issue a recommended decision finally determining that the Commission lacks statutory authority" over wireless carriers for purposes of contributing to the Pennsylvania USF. Motion at page 6, para. 11.1. The Motion goes on to request bifurcation of the wireless jurisdictional issue "from the remaining issues . . . in order to permit immediate Commission consideration of the recommended decision as a final order." Motion at page 6, para. 11.2.

CONCLUSION

For the reasons set forth above, Sprint supports the procedural request for an upfront determination of the legal issue regarding Commission jurisdiction over wireless carriers and/or services. Sprint also suggests a temporary stay of the litigation schedule pending Commission resolution of this issue pending interlocutory review. Sprint opposes the Motion's request to sever the wireless jurisdictional issue for both litigation and disposition in a bifurcated (*i.e.*, parallel) proceeding.

Respectfully submitted,



Zsuzsanna E. Benedek, Esquire
Sprint Communications Company, L.P.
240 North Third Street, Suite 201
Harrisburg, PA 17101
Phone: (717) 245-6346
Fax: (717) 238-7844
e-mail: sue.e.benedek@mail.sprint.com

On behalf of The United Telephone
Company of Pennsylvania d/b/a Sprint

DATED: April 7, 2005

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation Regarding Intrastate Access :
Charges and IntraLATA Toll Rates of Rural : Docket No. I-00040105
Carriers, and the Pennsylvania Universal :
Service Fund :
:

RECEIVED
2005 APR - 7 PM 2: 26
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of April, served a true copy of the foregoing Answer was served upon the persons below, via first-class mail, in accordance with the requirements of 52 Pa. Code §1.54:

Philip F. McClelland, Esquire
Joel H. Cheskis, Esquire
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101

Robert V. Eckenrod, Esquire
Pennsylvania Public Utility Commission
Office of Trial Staff
400 North Street, 2nd Floor
Harrisburg, PA 17120

Steven C. Gray, Esquire
Office of Small Business Advocate
300 North Second Street
Commerce Building, Suite 1102
Harrisburg, PA 17101

Bradford M. Stern, Esquire
Martin C. Rothfelder, Esquire
Rothfelder, Stern, LLC
625 Central Avenue
Westfield, NJ 07090

D. Mark Thomas, Esquire
Patricia Armstrong, Esquire
Thomas, Thomas, Armstrong and Niesen
212 Locust Street, Suite 500
Harrisburg, PA 17108

Daniel Clearfield, Esquire
Alan Kohler, Esquire
Wolf, Block, Schorr and Solis-Cohen, LLP
212 Locust Street, Suite 300
Harrisburg, PA 17101

Michelle Painter, Esquire
MCI
22001 Loudoun County Parkway,
C2-2-105
Ashburn, VA 20147

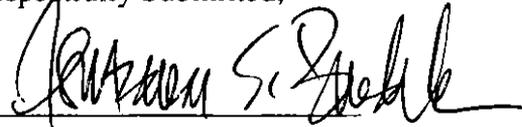
Julia A. Conover, Esquire
Suzan DeBusk Paiva, Esquire
Verizon Pennsylvania Inc.
1717 Arch Street, 32nd Floor
Philadelphia, PA 19103

Jennifer A. Duane, Esquire
Sprint
401 9th Street, NW, Suite 400
Washington, DC 20004

Christopher M. Arfaa, Esquire
Susan M. Roach, Esquire
Drinker, Biddle and Reath, LLP
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103

John M. Povilaitis, Esquire
Matthew A. Totino, Esquire
Ryan, Russell, Ogden & Seltzer, LLP
800 North Third Street, Suite 101
Harrisburg, PA 17102-2025

Respectfully Submitted,



Zsuzsanna E. Benedek, Esquire
The United Telephone Company
of Pennsylvania *d/b/a* Sprint
240 North Third Street, Suite 201
Harrisburg, PA 17101
Direct Phone: (717) 245-6346
Fax: (717) 236-1389
E-Mail: sue.e.benedek@mail.sprint.com

ORIGINAL

WolfBlock

212 Locust Street, Suite 300, Harrisburg, Pennsylvania 17101
Tel: (717) 237-7160 □ Fax: (717) 237-7161 □ www.WolfBlock.com

Direct Dial: (717) 237-7172
Direct Fax: (717) 237-7161
E-mail: akohler@wolfblock.com

April 7, 2005

James McNulty
Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg. 2nd Fl.
400 Commonwealth Street
P.O. Box 3265
Harrisburg, PA 17105-3265

DOCUMENT
FOLDER

RECEIVED
2005 APR -7 PM 2:40
PA PUC
SECRETARY'S BUREAU

Re: Investigation Regarding Intrastate Access Charges and
IntraLATA Toll Rates and Rural Carriers, and the
Pennsylvania Universal Service Fund,
Docket No. I-00040105

Dear Secretary McNulty

On behalf of AT&T Communications of Pennsylvania, L.L.C., enclosed for filing please find an original and three copies of its Answer to Wireless Carriers' Motion Regarding Commission Jurisdiction Over Wireless Universal Service Fund Contribution with regard to the above referenced matter. All Parties have been served in accordance with the attached Certificate of Service.

Respectfully,



Alan Kohler

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

ACK/lww
Enclosure

cc: Attached Certificate of Service

KJR

HAR:58352.1/ATT004-225580

Boston, MA ■ Cherry Hill, NJ ■ Harrisburg, PA ■ New York, NY ■ Norristown, PA ■ Philadelphia, PA ■ Roseland, NJ ■ Wilmington, DE
WolfBlock Government Relations - Harrisburg, PA ■ WolfBlock Public Strategies - Boston, MA and Washington, DC

Wolf, Block, Schorr and Solis-Cohen LLP a Pennsylvania Limited Liability Partnership

59

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a true copy of AT&T Communications of Pennsylvania, LLC's Answer to Wireless Carriers' Motion Regarding Commission Jurisdiction Over Universal Service Fund Contribution to be served via first class mail upon the following persons:

Patricia Armstrong
Dr. Mark Thomas
Thomas Thomas Armstrong & Niesen
212 Locust Street, Suite 500
Harrisburg, PA 17108

Philip F. McClelland, Esquire
Joel H. Cheskis, Esquire
Office of Attorney General
Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, PA 17101

Steven C. Gray, Esquire
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

Robert V. Eckenrod, Esquire
Pa. Public Utility Commission
Office of Trial Staff
P. O. Box 3265
Harrisburg, PA 17105-3265

Bradford M. Stern, Esquire
Martin C. Rothfelder, Esquire
Rothfelder Stern LLC
625 Central Avenue
Westfield, NJ 07090

Michelle Painter, Esquire
MCI
22001 Loudon County Parkway, C2-2-105
Ashburn, VA 20147

Zsuzanna E. Benedek
The United Telephone Company
of Pennsylvania d/b/a Sprint
240 North Third Street, Suite 201
Harrisburg, PA 17101

Julia A. Conover, Esquire
Suzan DeBusk Paiva, Esquire
Verizon
1717 Arch Street, 32nd Floor
Philadelphia, PA 19103

John F. Povilaitis, Esquire
Matthew A. Totino, Esquire
Ryan, Russell, Ogden & Seltzer LLP
800 North Third Street, Suite 101
Harrisburg, PA 17102-2025

Christopher M. Arfaa, Esquire
Susan M. Roach, Esquire
Drinker Biddle & Reath LLP
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103

RECEIVED
2005 APR -7 PM 2:40
PA. PUB.
SECRETARY'S BUREAU

Jennifer A. Duane, Esquire
Sprint Communications Company, LP
401 9th Street, NW
Washington, DC 20004



Alan C. Kohler

Date: April 7, 2005

ORIGINAL

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation Regarding Intrastate Access :
Charges and IntraLATA Toll Rates of Rural : Docket No. I-00040105
Carriers, and the Pennsylvania Universal :
Service Fund :
:

SECRETARY'S BUREAU

2005 APR - 7 PM 2:40

RECEIVED

**AT&T COMMUNICATIONS OF PENNSYLVANIA, L.L.C.'S
ANSWER TO WIRELESS CARRIERS' MOTION REGARDING COMMISSION
JURISDICTION OVER WIRELESS UNIVERSAL SERVICE FUND CONTRIBUTION**

AT&T Communications of Pennsylvania, L.L.C. ("AT&T") submits this Answer in response and in opposition to the March 25, 2005 Motion submitted by the Wireless Carriers in the above-captioned matter.¹ The Wireless Carriers request an interlocutory determination that they are exempt from Commission jurisdiction, and, therefore can not be required to contribute, or otherwise participate, in the state Universal Service Fund ("USF") administered by the Commission.

While, in the past, this Commission has determined that it has enabling authority to require wireless carriers to participate in USF funding,² the Commission ultimately decided that

DOCKETED
MAY 2 2005

**DOCUMENT
FOLDER**

¹ The Wireless Carriers are Omnipoint Communications, Inc. d/b/a T-Mobile, Omnipoint Communications Enterprises, LLC d/b/a T-Mobile, Voicestream Pittsburgh LP d/b/a T-Mobile, Nextel Communications, Inc. and Belco Partnership d/b/a Verizon Wireless.

² See, *Rulemaking Re Establishing Universal Service Fund Regulations*, at L-00950105 (June 21, 1996); *In re: Formal Investigation to Examine and Establish Updated*

wireless carriers should be omitted from the contribution base in the existing state USF. While the issue over the scope of Commission authority to require wireless carrier contribution has not been finally resolved,³ the issue of whether wireless carriers should contribute to the Commission's USF from a policy perspective is beyond reasonable dispute.

The purpose of a USF is to protect high cost areas from high local rates by establishing an explicit subsidy for those areas and then spreading out the required universal service support over all telecommunications carriers who receive the benefit of having all or the vast majority of residents and businesses connected to the telecommunications network. Clearly, wireless carriers receive equal, if not greater benefit from universal service connectivity as other telecommunications carriers, including those, like AT&T, which currently contribute to the Pennsylvania USF. Accordingly, from a policy perspective, wireless carriers should contribute to all USFs, including the USF administered by this Commission. This is fully consistent with federal universal service principles embodied in 47 U.S.C. § 254.

Furthermore, the failure to include wireless carriers in the Commission's USF contribution scheme also creates competitive concerns between carriers. More and more,

Universal Service Principles and Policies for Telecommunications Services in the Commonwealth, I-00940035, Order on Reconsideration (July 31, 1997) at 19-20. .

³ The Wireless Carriers reliance on the Commonwealth Court's decision in *Bell Atlantic-Pennsylvania, Inc. v. Pa. P.U.C.*, 763 A.2d 440 (Pa. Cmwlth 2000) as conclusively deciding this issue is misplaced. While the Court discussed the jurisdictional issue, it determined that the issue of wireless carrier USF contribution had not been preserved for appeal. 763 A.2d at 599.

landline carriers, like AT&T, compete with wireless carriers for consumer and business telecommunications traffic. Where landline carriers' must reflect USF contributions and wireless carriers' prices do not, the wireless carriers are given an unfair and artificial pricing advantage. This cost advantage has helped fuel the wireless carriers' tremendous growth and is a key cause of landline carriers' loss of traffic. Thus, by assessing universal service costs on USF contributors, like AT&T, without assessing wireless competitors, the Commission has created an unfair and inequitable competitive disadvantage on USF contributions which can not be maintained.

Whether or not the Commission currently has enabling authority to establish wireless carrier contribution obligations is a legitimate legal issue, although, as AT&T notes above, the Commission has found that it has such authority in the past. Regardless, the Commission will never have an equitable and proper USF until such time as it establishes wireless carrier contribution obligations. Accordingly, if the Commission finds that it does not currently have the requisite enabling authority, the agency should seek amendment to its enabling statute to assure that it can establish USF contribution obligations for all telecommunications carriers which receive the benefits of universal service, including the Wireless Carriers here.

In response to specific allegations AT&T states as follows:

1-10. AT&T either admits or denies the specific allegations of the Wireless Carriers in this motion, consistent with the above discussion.

WHEREFORE, for all of the foregoing reasons, the Commission should resolve the instance motion consistent with the discussion above.

Respectfully submitted



Daniel Clearfield, Esq.
Alan Kohler, Esq.
Wolf, Block, Schorr and Solis-Cohen LLP
212 Locust Street, Suite 300
Harrisburg, PA 17101
(717) 237-7160

Of Counsel:
Mark Keffer, Esq.
Robert C. Barber, Esq.
AT&T Communications of Pennsylvania LLC
3033 Chain Bridge Rd., Room 3-D
Oakton, VA 22185

Dated: April 7, 2005



ORIGINAL

OFFICE OF SMALL BUSINESS ADVOCATE
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, Pennsylvania 17101

William R. Lloyd, Jr.
Small Business Advocate

(717) 783-2525
(717) 783-2831 (FAX)

April 7, 2005

RECEIVED
2005 APR -7 PM 3: 38
PA FILE
SECRETARY'S BUREAU

HAND DELIVERED

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P. O. Box 3265
Harrisburg, PA 17105-3265

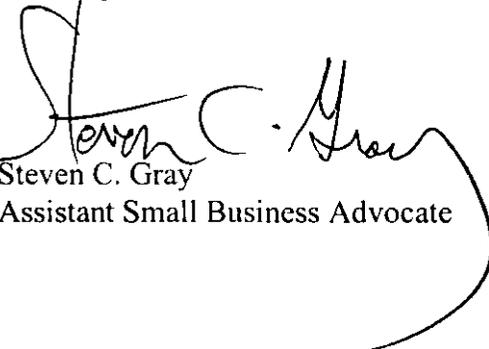
**Re: Investigation Regarding Intrastate Access Charges and
IntraLATA Toll Rates of Rural Carriers, and the
Pennsylvania Universal Service Fund
Docket No. I-00040105**

Dear Secretary McNulty:

I am delivering for filing today the original plus three copies of the Answer on behalf of the Office of Small Business Advocate to the Motion of Wireless Carriers for Determination that the Commission Lacks Jurisdiction to Require CMRS Providers to Contribute to the Funding of a Pennsylvania Universal Service Fund, and for Bifurcation or Certification for Immediate Commission Review.

A copy has been served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

Sincerely,


Steven C. Gray
Assistant Small Business Advocate

DOCUMENT
FOLDER

Enclosures

cc: Hon. Susan D. Colwell
Administrative Law Judge

Parties of Record

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation Regarding Intrastate Access :
Charges and IntraATA Toll Rates of Rural : Docket No. I-00040105
Carriers, and the Pennsylvania Universal :
Service Fund :

**ANSWER OF THE
OFFICE OF SMALL BUSINESS ADVOCATE TO THE
MOTION OF WIRELESS CARRIERS**

PA PUC
SECRETARY'S BUREAU

2005 APR -7 PM 3: 38

RECEIVED

Pursuant to 52 Pa. Code § 5.103, the Office of Small Business Advocate (“OSBA”) answers the Motion of Wireless Carriers for Determination that the Commission Lacks Jurisdiction to Require CMRS Providers to Contribute to the Funding of a Pennsylvania Universal Service Fund, and for Bifurcation or Certification for Immediate Commission Review (“Motion”). Omnipoint Communications Inc., Omnipoint Communications Enterprises LLC, Voicestream Pittsburgh LP, Nextel Communications Inc., and Cellco Partnership (the “Commercial Mobile Radio Service Providers” or “CMRS Providers”) filed the Motion on March 25, 2005.

Responses to the Motion’s Numbered Paragraphs

1. The averments of Paragraph 1 are denied. The OSBA has no basis upon which to confirm the business activities of the CMRS Providers, and demands strict proof thereof.

2. The OSBA admits that there exists a Pennsylvania Universal Service Fund (“USF”) and that the CMRS Providers do not contribute to the USF. The remaining averments of Paragraph 2 are conclusions of law to which no response is required.

3. The averments of Paragraph 3 are admitted in part and denied in part. The Pennsylvania Public Utility Commission (“Commission”) entered an Order at Docket No.

DOCUMENT
FOLDER

DOCKETED
APR 26 2005

I-00050105 on December 20, 2004, and that Order speaks for itself. The remaining averments of Paragraph 3 are conclusions of law to which no response is required.

4. The averments of Paragraph 4 are denied. First, the OSBA has no basis upon which to confirm the litigation strategy of the CMRS Providers. Second, the remaining averments of Paragraph 4 are summaries of the CMRS Providers' request for relief to which no response is required.

5. The averments of Paragraph 5 are summaries of the CMRS Providers' request for relief to which no response is required.

6. The averments of Paragraph 6 are conclusions of law to which no response is required.

7. The averments of Paragraph 7 are conclusions of law to which no response is required.

8. The averments of Paragraph 8 are conclusions of law to which no response is required.

9. The averments of Paragraph 9 are conclusions of law to which no response is required. By way of further response, the OSBA offers the following:

a. The Commonwealth Court addressed the USF in *Bell Atlantic – Pennsylvania, Inc. v. PUC*, 763 A.2d 440 (Pa. Cmwlth. 2000), *vacated in part on other grounds sub nom. MCI WorldCom, Inc. v. PUC*, 577 Pa. 294, 844 A.2d 1239 (2004). In that case, the Commission pointed to numerous statutes (including 66 Pa. C.S. §§ 501 and 3009(b)(3), and 47 U.S.C. § 254(f)) as conferring authority upon the Commission to establish the USF. The Commonwealth Court agreed, holding as follows:

The conclusion here must be that the state and federal statutes do confer upon the PUC the power to establish a Universal Service Fund, as Bell and other 1649 Petition signers requested the PUC to do.

Bell Atlantic, at 497.

b. The Commonwealth Court in *Bell Atlantic* also concluded that each state has the option to decide whether to require wireless carriers to participate in the USF. Specifically, the Court held as follows:

With respect to GTE's reliance upon *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), Sprint/United correctly reports that the federal court perceived no mandate that wireless carriers be included in a USF, leaving that decision as optional with state commissions. This Court agrees with that reading of the case's result.

Bell Atlantic, at 499-500.

c. The Commonwealth Court in *Bell Atlantic* acknowledged that wireless carriers are not public utilities under 66 Pa. C.S. § 102(2)(iv), and held as follows:

Moreover, as Sprint/United calls to our attention, an entity engaged in wireless communications exclusively, i.e. any person 'not otherwise a public utility, who or which furnishes mobile domestic cellular radio telecommunications service' is not within the definition of 'public utility' subject to PUC jurisdiction.

Id., at 499 (citations omitted). However, when the Commonwealth Court upheld the Commission's decision not to include wireless carriers in the USF, the Court did not expressly conclude that 66 Pa. C.S. § 102(2)(iv) deprived the Commission of the "option" of including wireless carriers as contributors. Instead, the Commonwealth Court left that question undecided. *See Bell Atlantic*, at 499.

d. The USF will be significantly impacted by whether the CMRS Providers are required to contribute to that fund. Since the question of whether wireless carriers can properly be required to contribute to the USF was not expressly decided in *Bell Atlantic*, there was a rational basis for the Commission to direct that a record be developed on their possible participation. Therefore, the issue should not be decided by an expedited motion. Instead, the Administrative Law Judge ("ALJ") and the

Commission should deny the Motion and allow this issue to be fully briefed at the conclusion of this proceeding.

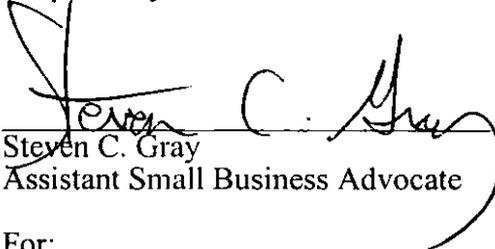
10. The averments of Paragraph 10 are summaries of the CMRS Providers' request for relief to which no response is required.

11. The averments of Paragraph 11 are summaries of the CMRS Providers' request for relief to which no response is required.

Conclusion

WHEREFORE, the Office of Small Business Advocate requests that the ALJ and the Commission deny the CMRS Providers' Motion in its entirety.

Respectfully submitted,



Steven C. Gray
Assistant Small Business Advocate

For:

William R. Lloyd, Jr.
Small Business Advocate

Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101
(717) 783-2525

Dated: April 7, 2005

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation Regarding Intrastate Access
Charges and IntraATA Toll Rates of Rural
Carriers, and the Pennsylvania Universal
Service Fund

Docket No. I-00040105

RECEIVED
2005 APR -7 PM 3:38
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Answer on behalf of the Office of Small Business Advocate to the Motion of the Wireless Carriers, by e-mail and first class mail upon the persons addressed below:

Hon. Susan D. Colwell
Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 783-3265
(717) 787-0481 (fax)
scolwell@state.pa.us

Zsuzsanna E. Benedek, Esquire
Sprint
240 North Third Street, Suite 201
Harrisburg, PA 17101
(717) 236-1385
(717) 236-1389 (fax)
sue.e.benedek@mail.sprint.com

Jennifer A. Duane, Esquire
Sprint Communications Company, L.P.
401 9th Street, NW, Suite 400
Washington, DC 20004
(202) 585-1937
(202) 585-1894 (fax)
jennifer.a.duane@mail.sprint.com

Daniel Clearfield, Esquire
Alan C. Kohler, Esquire
Wolf, Block, Schorr & Solis-Cohen
212 Locust Street, Suite 300
Harrisburg, PA 17101
(717) 237-7160
(717) 237-7161 (fax)
dclearfield@wolfblock.com
akohler@wolfblock.com

Philip F. McClelland, Esquire
Joel H. Cheskis, Esquire
Office of Consumer Advocate
555 Walnut Street
5th FL Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048
(717) 783-7152 (fax)
pmcclelland@paoca.org
jcheskis@paoca.org

Robert V. Eckenrod, Esquire
Office of Trial Staff
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105
(717) 787-1976
(717) 772-2677 (fax)
roeckenrod@state.pa.us

Michelle Painter, Esquire
MCImetro Access Transmission Services 22001
Loudoun County Parkway, C2-2-105
Ashburn, VA 20147
(703) 886-5973
(703) 886-0633 (fax)
Michelle.painter@mci.com

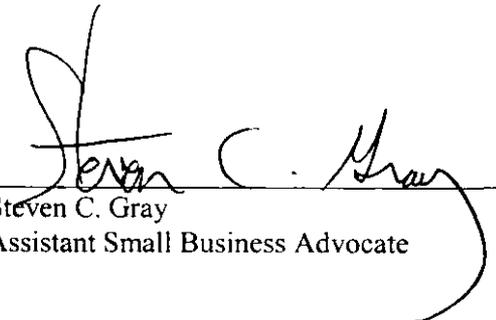
John P. Povilaitis, Esquire
Matthew A. Totino, Esquire
Ryan, Russell, Ogden & Seltzer
Suite 101
800 North Third Street
Harrisburg, PA 17102-2025
(717) 236-7714
(717) 236-7816 (fax)
jpovilaitis@ryanrussell.com
mtotino@ryanrussell.com

Patricia Armstrong, Esquire
D. Mark Thomas, Esquire
Regina L. Matz, Esquire
Thomas, Thomas, Armstrong & Niesen
212 Locust Street, Suite 500
P.O. Box 9500
Harrisburg, PA 17108-9500
(717) 255-7600
(717) 236-8278 (fax)
parmstrong@ttanlaw.com
dmthomas@ttanlaw.com
rmatz@ttanlaw.com

Bradford M. Stern, Esquire
Martin C. Rothfelder, Esquire
Rothfelder Stern, L.L.C.
625 Central Avenue
Westfield, NJ 07090
(908) 301-1211
(908) 301-1212 (fax)
bmstern@rothfelderstern.com
mcrothfelder@rothfelderstern.com

Christopher M. Arfaa, Esquire
Susan M. Roach, Esquire
Drinker Biddle & Reath
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103-6996
(215) 988-2715
(215) 988-2757 (fax)
christopher.arfaa@dbr.com

Julia A. Conover, Esquire
Suzan DeBusk Paiva
Verizon
1717 Arch Street, 32 Floor
Philadelphia, PA 19103
(215) 963-6068
(215) 563-2658 (fax)
Julia.a.conover@verizon.com
Suzan.d.paiva@verizon.com



Steven C. Gray
Assistant Small Business Advocate

Date: April 7, 2005

Suzan DeBusk Paiva
Assistant General Counsel
Law Department

RECEIVED

APR 07 2005

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



Verizon Pennsylvania Inc.
1717 Arch Street, 32NW
Philadelphia, PA 19103

Tel: (215) 963-6068
Fax: (215) 563-2658
Suzan.D.Paiva@Verizon.com

April 7, 2005

VIA OVERNIGHT MAIL

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Filing Room - Second Floor
Commonwealth Keystone Building
PO Box 3265
Harrisburg, PA 17105-3265

DOCKETED
SEP 02 2005

Re: Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of
Rural Carriers, and the Pennsylvania Universal Service Fund,
Docket No. I-00040105

DOCUMENT
FOLDER

Dear Mr. McNulty:

Verizon Pennsylvania Inc. and Verizon North Inc. file this letter in lieu of a more formal response to state that they support the "Motion of Wireless Carriers for a Determination that the Commission Lacks Jurisdiction to Require CMRS Providers to Contribute to the Funding of a Pennsylvania Universal Service Fund, and for Bifurcation or Certification for Immediate Commission Review."

Very truly yours,


Suzan D. Paiva

Via Email and UPS Overnight Delivery
cc: The Honorable Susan Colwell, ALJ
Certificate of Service

72

CERTIFICATE OF SERVICE

I, Suzan D. Paiva, hereby certify that I have this day served a copy of the Foregoing Letter of Verizon Pennsylvania Inc. and Verizon North Inc., to the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 7th day of April, 2005.

VIA E-MAIL AND UPS OVERNIGHT DELIVERY

Patricia Armstrong, Esquire
Thomas, Thomas, Armstrong
& Niesen
212 Locust Street, Suite 500
Harrisburg, PA 17108
parmstrong@ttanlaw.com
(717) 255-7600
Counsel for RTCC

Michelle Painter, Esquire
MCI WorldCom, Inc.
22001 Loudoun County Parkway
C2-2-105
Ashburn, VA 20147
Michelle.painter@mci.com
(703) 886-5973

Robert V. Eckenrod, Esquire
Office of Trial Staff
400 North Street
Harrisburg PA 17120
roeckenrod@state.pa.us
(717) 787-1976

Daniel Clearfield, Esq.
Alan C. Kohler, Esq.
Wolf Block Schorr Solis-cohen LLP
212 Locust St., Suite 300
Harrisburg, PA 17101
dclearfield@wolfblock.com
(717) 237-7172

John F. Povilaitis, Esq.
Matthew A. Totino, Esq.
Ryan, Russell, Ogden & Seltzer LLP
800 North Third Street, Suite 101
Harrisburg, PA 17102-2025
jpovilaitis@ryanrussell.com
(717) 236-7714
Counsel for Qwest

Philip F. McClelland, Esquire
Joel H. Cheskis, Esq.
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101-1923

Zsuzanna Benedek, Esquire
Sprint Communications Company LP
240 North Third Street, Suite 201
Harrisburg, PA 17101
sue.e.benedek@mail.sprint.com
(717) 245-6346

Christopher M. Arfaa, Esq.
Susan M. Roach, Esq.
Drinker, Biddle & Reath LLP
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103
Christopher.arfaa@dbr.com
Susan.roach@dbr.com
(215) 988-2700

Steven C. Gray, Esquire
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg PA 17101
sgray@state.pa.us
(717) 783-2525

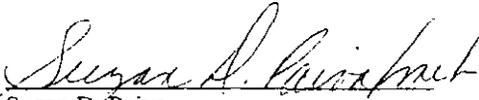
Bradford M. Stern, Esq.
Martin C. Rothfelder, Esq.
Rothfelder Stern, LLC
625 Central Avenue
Westfield, NJ 07090
bmstern@rothfelderstern.com
(908) 301-1211

RECEIVED

APR 07 2005

PA PUBLIC UTILITY CODE SECTION 1.54
SECRETARY'S BUREAU

Kristin Smith, Esq.
Qwest Communications Corp.
1801 California Street
Suite 4900
Denver, CO 80202
Kristin.smith@qwest.com



Suzan D. Paiva
Verizon Pennsylvania Inc.
Verizon North Inc.
1717 Arch Street, 32NW
Philadelphia, PA 19103
(215) 963-6068

PLEASE DOCKET



OFFICE OF SMALL BUSINESS ADVOCATE
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, Pennsylvania 17101

William R. Lloyd, Jr.
Small Business Advocate

April 13, 2005

(717) 783-2525
(717) 783-2831 (FAX)

Hon. Susan D. Colwell
Administrative Law Judge
Pa. Public Utility Commission
Commonwealth Keystone Bldg.
P.O. Box 3265
Harrisburg, PA 17105-3265

DOCUMENT
FOLDER

RECEIVED

APR 15 2005

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

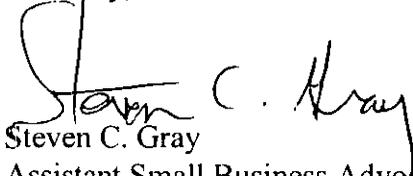
**Re: Investigation Regarding Intrastate Access Charges and
IntraLATA Toll Rates of Rural Carriers, and the
Pennsylvania Universal Service Fund
Docket No. I-00040105**

Dear Judge Colwell:

Enclosed is Appendix A to the Protective Order you issued on April 1, 2005, in the above captioned proceeding. OSBA and its expert, Allen G. Buckalew, agree to be bound by the terms and conditions of the Protective Order.

A copy has been served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

Sincerely,


Steven C. Gray
Assistant Small Business Advocate

Enclosure

cc: Parties of Record

Allen J. Buckalew

PA PUC
05 APR 16 11 59 AM
OFFICE OF THE SECRETARY

APPENDIX A

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKETED
SEP 09 2005

Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund	:	Docket No. I-00040105
	:	
	:	
	:	

TO WHOM IT MAY CONCERN:

**DOCUMENT
FOLDER**

The undersigned is the expert officer, member, employee or counsel of

the OSBA (the retaining party).

The undersigned has read and understands the Protective Order issued in the above captioned proceeding, which Order deals with the treatment of Proprietary and Highly Confidential Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Order. The undersigned agrees that any Proprietary and Highly Confidential Information shall be used or disclosed only for purposes of preparation for, and conduct of the above captioned proceeding, and any administrative or judicial review thereof, and shall not be disclosed or used for any other purposes whatsoever.

Steven C. Gray
Signature

Steven C. Gray
Print Name

300 N. Second Ave 17101
Address

OSBA
Employer

Date: 4/13/05

APPENDIX A
Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKETED
SEP 09 2005

Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund	:	Docket No. I-00040105
---	---	-----------------------

DOCUMENT
FOLDER

TO WHOM IT MAY CONCERN:

The undersigned is the expert officer, member, employee or counsel of OSBA

The undersigned has read and understands the Protective Order issued in the above captioned proceeding, which Order deals with the treatment of Proprietary and Highly Confidential Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Order. The undersigned agrees that any Proprietary and Highly Confidential Information shall be used or disclosed only for purposes of preparation for, and conduct of the above captioned proceeding, and any administrative or judicial review thereof, and shall not be disclosed or used for any other purposes whatsoever.



Signature

ALLEN G. BUCKALEW
ECONOMIC COUNSEL
Print Name
ROSSLYN PLAZA C • SUITE 1104
1601 NORTH KENT STREET • ARLINGTON, VA 22209

Address
J.W. Wen & Associates, PC
Employer

Date: April 7, 2005

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation Regarding Intrastate Access :
Charges and IntraATA Toll Rates of Rural : Docket No. I-00040105
Carriers, and the Pennsylvania Universal :
Service Fund :

CERTIFICATE OF SERVICE

I certify that I am serving a copy of the foregoing document on behalf of the Office of Small Business Advocate by first class mail upon the persons addressed below:

Hon. Susan D. Colwell
Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 783-3265
(717) 787-0481 (fax)
scolwell@state.pa.us

Zsuzsanna E. Benedek, Esquire
Sprint
240 North Third Street, Suite 201
Harrisburg, PA 17101
(717) 236-1385
(717) 236-1389 (fax)
sue.e.benedek@mail.sprint.com

Jennifer A. Duane, Esquire
Sprint Communications Company, L.P.
401 9th Street, NW, Suite 400
Washington, DC 20004
(202) 585-1937
(202) 585-1894 (fax)
jennifer.a.duane@mail.sprint.com

Daniel Clearfield, Esquire
Alan C. Kohler, Esquire
Wolf, Block, Schorr & Solis-Cohen
212 Locust Street, Suite 300
Harrisburg, PA 17101
(717) 237-7160
(717) 237-7161 (fax)
dclearfield@wolfblock.com
akohler@wolfblock.com

Philip F. McClelland, Esquire
Joel H. Cheskis, Esquire
Office of Consumer Advocate
555 Walnut Street
5th FL Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048
(717) 783-7152 (fax)
pmcclelland@paoca.org
jcheskis@paoca.org

Robert V. Eckenrod, Esquire
Office of Trial Staff
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105
(717) 787-1976
(717) 772-2677 (fax)
roeckenrod@state.pa.us

Michelle Painter, Esquire
MCImetro Access Transmission Services 22001
Loudoun County Parkway, C2-2-105
Ashburn, VA 20147
(703) 886-5973
(703) 886-0633 (fax)
Michelle.painter@mci.com

John P. Povilaitis, Esquire
Matthew A. Totino, Esquire
Ryan, Russell, Ogden & Seltzer
Suite 101
800 North Third Street
Harrisburg, PA 17102-2025
(Qwest)
(717) 236-7714
(717) 236-7816 (fax)
jpovilaitis@ryanrussell.com
mtotino@ryanrussell.com

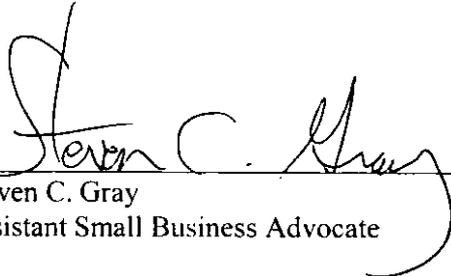
Patricia Armstrong, Esquire
D. Mark Thomas, Esquire
Regina L. Matz, Esquire
Michael L. Swindler, Esquire
Thomas, Thomas, Armstrong & Niesen
212 Locust Street, Suite 500
P.O. Box 9500
Harrisburg, PA 17108-9500
(RTCC)
(717) 255-7600
(717) 236-8278 (fax)
parmstrong@ttanlaw.com
dmthomas@ttanlaw.com
rmatz@ttanlaw.com
mwindler@ttanlaw.com

Bradford M. Stern, Esquire
Martin C. Rothfelder, Esquire
Rothfelder Stern, L.L.C.
625 Central Avenue
Westfield, NJ 07090
(Omnipoint, T-Mobile, Nextel)
(908) 301-1211
(908) 301-1212 (fax)
bmstern@rothfelderstern.com
mrothfelder@rothfelderstern.com

Robert C. Barber, Esquire
Mark Keffer, Esquire
AT&T Communications of PA, Inc.
1120 20th Street, NW, Suite 1000
Washington, DC 20036
(202) 457-2160 (rb)
(202) 457-3839 (mk)
(202) 664-9658 (fax)
rcbarber@att.com
mkeffer@att.com

Christopher M. Arfaa, Esquire
Susan M. Roach, Esquire
Drinker Biddle & Reath
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103-6996
(Cellco, Verizon Wireless, Cingular)
(215) 988-2715
(215) 988-2757 (fax)
christopher.arfaa@dbr.com
susan.roach@dbr.com

Julia A. Conover, Esquire
Suzan DeBusk Paiva
Verizon
1717 Arch Street, 32 Floor
Philadelphia, PA 19103
(215) 963-6068
(215) 563-2658 (fax)
Julia.a.conover@verizon.com
Suzan.d.paiva@verizon.com


Steven C. Gray
Assistant Small Business Advocate

Date: April 13, 2005

ORIGINAL

Michelle Painter, Senior Counsel
Law and Public Policy
22001 Loudoun County Parkway
Ashburn, VA 20147
Telephone 703 886 5973



April 15, 2005

Via Overnight Delivery

DOCKETED
SEP 09 2005

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Investigation Regarding Intrastate Access Charges and IntraLATA
Toll Rates of Rural Carriers, and the Pennsylvania Universal
Service Fund, Docket No. I-00040105

DOCUMENT
FOLDER

Dear Mr. McNulty:

MCImetro Access Transmission Services LLC ("MCI") files this letter in response to the Answers filed by various carriers to the Motion of Wireless Carriers for Determination that the Commission Lacks Jurisdiction to Require CMRS Providers to Contribute to the Funding of a Pennsylvania Universal Service Fund, and for Bifurcation or Certification for Immediate Commission Review in the above-referenced case.

MCI supports the Answers filed by the Rural Telephone Company Coalition and AT&T Communications of Pennsylvania, LLC to the extent that they oppose the Motion of the wireless carriers and support the inclusion of wireless carriers as contributors to the state Universal Service Fund.

Please contact me if you have any questions or concerns with this filing.

Very truly yours,

Michelle Painter
Michelle Painter

Enclosure

cc: The Honorable Susan D. Colwell
Service List

120

SERVICE LIST

I hereby certify that I have this day caused a true copy of MCI's Prehearing Memorandum and MCI's Letter regarding the Wireless Carriers' Motion to be served upon the parties of record in Docket No. I-00040105 in accordance with the requirements of 52 Pa. Code Sections 1.52 and 1.54 in the manner and upon the parties listed below.

Dated in Harrisburg, PA on April 15, 2005

VIA E-MAIL AND FIRST CLASS MAIL

Philip F. McClelland, Esquire
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg PA 17101-1923
(717) 783-5048

Steven C. Gray, Esquire
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg PA 17101
(717) 783-2525

Robert V. Eckenrod, Esquire
Pa. Public Utility Commission
Office of Trial Staff
400 North St.
Harrisburg PA 17105-3265
(717) 787-1976

Sue Benedek, Esquire
The United Telephone Company of
Pennsylvania d/b/a Sprint
240 North Third Street, Suite 201
Harrisburg PA 17101
(717) 245-6346

Patricia Armstrong, Esquire
Thomas, Thomas, Armstrong & Niesen
212 Locust Street, Suite 500
Harrisburg PA 17108-9500
(717) 255-7600

Bradford M. Stern, Esquire
Rothfelder Stern, L.L.C.
625 Central Avenue
Westfield, N.J. 07090
(908) 301-1211.

Julia A. Conover, Esquire
Verizon
1717 Arch Street, 32nd Floor
Philadelphia PA 19103
(215) 963-6001

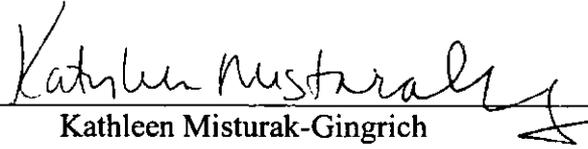
John F. Povilaitis, Esquire
Ryan, Russell, Ogden & Seltzer, LLP
800 North Third Street, Suite 101
Harrisburg PA 17102-2025
(717) 236-7714

Christopher M. Arfaa, Esquire
Drinker Biddle & Reath LLP
One Logan Square
18th & Cherry Streets
Philadelphia PA 19103
(215) 988-2700

Daniel Clearfield, Esquire
Wolf Block Schorr Solis-Cohen LLP
212 Locust Street, Suite 300
Harrisburg PA 17101

ORIGINAL

Kristin Smith
Qwest Communications
1801 California St, Suite 4900
Denver, CO 80202


Kathleen Misturak-Gingrich

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF SMALL BUSINESS ADVOCATE

Suite 1102, Commerce Building
300 North Second Street
Harrisburg, Pennsylvania 17101

William R. Lloyd, Jr.
Small Business Advocate

April 15, 2005

(717) 783-2525
(717) 783-2831 (FAX)

E-mail and First Class Mail

Hon. Susan D. Colwell
Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

DOCUMENT
FOLDER

**Re: Investigation Regarding Intrastate Access Charges and
IntraLATA Toll Rates of Rural Carriers, and the
Pennsylvania Universal Service Fund
Docket No. I-00040105**

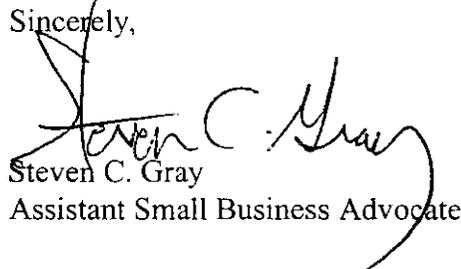
KJR

Dear Judge Colwell:

In accordance with your Second Prehearing Conference Order dated February 17, 2005, I am enclosing a copy of the Prehearing Memorandum on behalf of the Office of Small Business Advocate.

As evidenced by the enclosed certificate of service, all parties have been served as indicated.

Sincerely,


Steven C. Gray
Assistant Small Business Advocate

Enclosures

cc: James J. McNulty, Secretary
(w/enclosures)

Parties of Record

Mr. Allen Buckalew

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation Regarding Intrastate Access :
Charges and IntraATA Toll Rates of Rural : Docket No. I-00040105
Carriers, and the Pennsylvania Universal :
Service Fund :

**DOCUMENT
FOLDER**

**OFFICE OF SMALL BUSINESS ADVOCATE
PREHEARING MEMORANDUM**

I. **INTRODUCTION**

The Office of Small Business Advocate (OSBA) is authorized to represent the interests of small business consumers of utility services before the Pennsylvania Public Utility Commission pursuant to the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§399.41 - 399.50 ("the Act"). In order to discharge this statutory duty, the Small Business Advocate deems it necessary to participate as a party to this proceeding. Representing the OSBA in this matter is Steven C. Gray, Assistant Small Business Advocate. Please address all correspondence as follows:

Steven C. Gray, Esquire
Assistant Small Business Advocate
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, Pennsylvania 17101
(717) 783-2525
(717) 783-2831 (fax)
sgray@state.pa.us

DOCKETED
JUL 7 2005

II. **IDENTIFICATION OF WITNESSES AND TENTATIVE ISSUES**

Assisting in the development and presentation of the OSBA's case in this proceeding will be:

Mr. Allen Buckalew
J.W. Wilson & Associates, Inc.
Rosslyn Plaza C- Suite 1104
1601 North Kent Street
Arlington, VA 22209
(703) 243-1049
(703) 243-3389 (fax)
abuca@aol.com

The OSBA will participate in the proceeding to assure that the interests of small business customers are adequately represented and protected. The OSBA has identified the following issues:

1. Whether further access charge reductions are needed at this time;
2. Whether business local exchange rate increases should continue to be no greater than residential rate increases on a dollar for dollar basis;
3. How the FCC intercarrier compensation proceeding will affect this case;
4. Whether the LXC's are flowing through the access charge reductions they have received to date by reducing their toll rates;
5. Whether the LXC's will continue to compete actively for intraLATA toll call business;
6. Whether rural local exchange rates would skyrocket without the continued existence of the USF; and
7. Whether the Wireless Carriers should be required to contribute to the USF.

As appropriate and necessary, the OSBA will investigate and analyze the claims of all parties, setting forth the OSBA's positions through the presentation of testimony by its expert

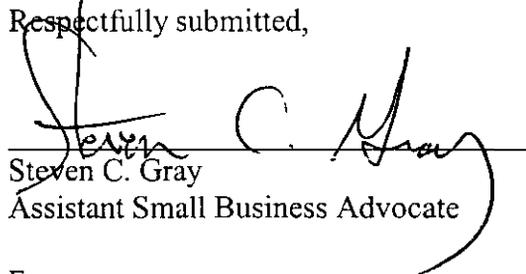
witness and via the cross-examination of witnesses appearing for other parties and via briefing of the issues that arise in this proceeding.

The OSBA reserves the right to pursue additional issues as they arise throughout the proceeding.

III. **HEARING AND BRIEFING SCHEDULE**

The OSBA is continuing to work with the parties to create a procedural schedule prior to the next scheduled Prehearing Conference on April 21, 2005.

Respectfully submitted,



Steven C. Gray
Assistant Small Business Advocate

For:

William R. Lloyd, Jr.
Small Business Advocate

Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101
(717) 783-2525
(717) 783-2831 (fax)

Dated: April 15, 2005

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation Regarding Intrastate Access :
Charges and IntraATA Toll Rates of Rural : Docket No. I-00040105
Carriers, and the Pennsylvania Universal :
Service Fund :

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Prehearing Memorandum on behalf of the Office of Small Business Advocate by e-mail and first class mail upon the persons addressed below:

Hon. Susan D. Colwell
Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 783-3265
(717) 787-0481 (fax)
scolwell@state.pa.us

Zsuzsanna E. Benedek, Esquire
Sprint
240 North Third Street, Suite 201
Harrisburg, PA 17101
(717) 236-1385
(717) 236-1389 (fax)
sue.e.benedek@mail.sprint.com

Jennifer A. Duane, Esquire
Sprint Communications Company, L.P.
401 9th Street, NW, Suite 400
Washington, DC 20004
(202) 585-1937
(202) 585-1894 (fax)
jennifer.a.duane@mail.sprint.com

Daniel Clearfield, Esquire
Alan C. Kohler, Esquire
Wolf, Block, Schorr & Solis-Cohen
212 Locust Street, Suite 300
Harrisburg, PA 17101
(717) 237-7160
(717) 237-7161 (fax)
dclearfield@wolfblock.com
akohler@wolfblock.com

Philip F. McClelland, Esquire
Joel H. Cheskis, Esquire
Office of Consumer Advocate
555 Walnut Street
5th FL Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048
(717) 783-7152 (fax)
pmcclelland@paoca.org
jcheskis@paoca.org

Robert V. Eckenrod, Esquire
Office of Trial Staff
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105
(717) 787-1976
(717) 772-2677 (fax)
roeckenrod@state.pa.us

Michelle Painter, Esquire
MCI metro Access Transmission Services 22001
Loudoun County Parkway, C2-2-105
Ashburn, VA 20147
(703) 886-5973
(703) 886-0633 (fax)
Michelle.painter@mci.com

John P. Povilaitis, Esquire
Matthew A. Totino, Esquire
Ryan, Russell, Ogden & Seltzer
Suite 101
800 North Third Street
Harrisburg, PA 17102-2025
(Qwest)
(717) 236-7714
(717) 236-7816 (fax)
jpovilaitis@ryanrussell.com
mtotino@ryanrussell.com

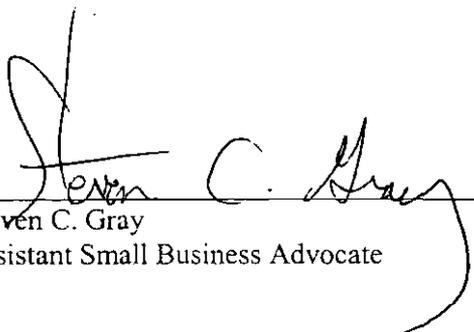
Patricia Armstrong, Esquire
D. Mark Thomas, Esquire
Regina L. Matz, Esquire
Michael L. Swindler, Esquire
Thomas, Thomas, Armstrong & Niesen
212 Locust Street, Suite 500
P.O. Box 9500
Harrisburg, PA 17108-9500
(RTCC)
(717) 255-7600
(717) 236-8278 (fax)
parmstrong@ttanlaw.com
dmthomas@ttanlaw.com
rmatz@ttanlaw.com
mswindler@ttanlaw.com

Bradford M. Stern, Esquire
Martin C. Rothfelder, Esquire
Rothfelder Stern, L.L.C.
625 Central Avenue
Westfield, NJ 07090
(Omnipoint, T-Mobile, Nextel)
(908) 301-1211
(908) 301-1212 (fax)
bmstern@rothfelderstern.com
mcrothfelder@rothfelderstern.com

Robert C. Barber, Esquire
Mark Keffer, Esquire
AT&T Communications of PA, Inc.
1120 20th Street, NW, Suite 1000
Washington, DC 20036
(202) 457-2160 (rb)
(202) 457-3839 (mk)
(202) 664-9658 (fax)
rbarber@att.com
mkeffer@att.com

Christopher M. Arfaa, Esquire
Susan M. Roach, Esquire
Drinker Biddle & Reath
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103-6996
(Cellco, Verizon Wireless, Cingular)
(215) 988-2715
(215) 988-2757 (fax)
christopher.arfaa@dbr.com
susan.roach@dbr.com

Julia A. Conover, Esquire
Suzan DeBusk Paiva
Verizon
1717 Arch Street, 32 Floor
Philadelphia, PA 19103
(215) 963-6068
(215) 563-2658 (fax)
Julia.a.conover@verizon.com
Suzan.d.paiva@verizon.com



Steven C. Gray
Assistant Small Business Advocate

Date: April 15, 2005



McNees Wallace & Nurick LLC
attorneys at law

PLEASE DOCKET

PAMELA C. POLACEK
DIRECT DIAL: (717) 237-5368
E-MAIL ADDRESS: PPOLACEK@MWN.COM

April 15, 2005

VIA HAND DELIVERY

Honorable Susan D. Colwell
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor West
Harrisburg, PA 17120

DOCKETED
SEP 09 2005

RE: Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund; Docket No. I-00040105

Dear Judge Colwell:

RJP

As you may recall, the Broadband Cable Association of Pennsylvania ("BCAP") attended the February 16, 2005, Prehearing Conference in the above-referenced matter to monitor the issues identified by the parties and determine whether a sufficient basis exists to support BCAP's intervention in this matter under the standards identified in Section 5.72(a) of the Commission's regulations, 52 Pa. Code § 5.72(a). Although BCAP is concerned that the duration and structure of any rural universal service fund may impact the development of the competitive marketplace in the Commonwealth of Pennsylvania for both jurisdictional and non-jurisdictional services, to date the parties have not identified a specific issue to warrant active involvement or seeking party status. Because this conclusion may change based on issues or proposals identified by the parties throughout the process, BCAP will continue to monitor activities and filings in this matter. To the extent an issue directly affecting BCAP members' interests or otherwise warranting BCAP's participation arises, we will promptly notify Your Honor and the parties and seek formal party status.

If you have any questions regarding this issue, please feel free to contact us at your convenience. BCAP appreciates your continued indulgence as it attempts to protect its members' interests without unduly and unnecessarily burdening the Commission's docket by becoming a formal party.

Very truly yours,

McNEES WALLACE & NURICK LLC

By *Pamela C. Polacek*
Pamela C. Polacek

Counsel to the Broadband Cable
Association of Pennsylvania

RECEIVED

APR 18 2005

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCUMENT
FOLDER

RECEIVED
OFFICE OF THE CLERK
05 APR 15 PM 2:35
PA PUC

PCP/smd
c: Parties of Record

PO. BOX 1166 • 100 PINE STREET • HARRISBURG, PA 17108-1166 • TEL: 717.232.8000 • FAX: 717.237.5300 • WWW.MWN.COM

HAZLETON, PA • LANCASTER, PA • STATE COLLEGE, PA • COLUMBUS, OH • WASHINGTON, DC

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

VIA FIRST CLASS MAIL

Philip McClelland, Esq.
Joel Cheskis, Esq.
Shaun A. Sparks, Esq.
Barrett C. Sheridan, Esq.
Office of Consumer Advocate
555 Walnut Street
Forum Place – 5th Floor
Harrisburg, PA 17101-1921

William R. Lloyd, Jr., Esq.
Steven C. Gray, Esq.
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101

David E. Freet
Pennsylvania Telephone Association
30 North Third Street
Suite 300
P.O. Box 1169
Harrisburg, PA 17108-1169

David Mark Thomas, Esq.
Patricia Armstrong, Esq.
Regina L. Matz, Esq.
Thomas Thomas Armstrong & Niesen
212 Locust Street, Suite 500
P.O. Box 9500
Harrisburg, Pa 17108-9500

Johnnie E. Simms, Esq.
Robert V. Eckenrod, Esq.
Office of Trial Staff
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor West
Harrisburg, PA 17105-3265

Robert C. Barber, Esq.
Mark Keffer, Esq.
AT&T communications of PA
3033 Chain Bridge Road, Room 3D
Oakton, VA 22185

Zsuzsanna E. Benedek, Esq.
240 North Third Street, Suite 201
Harrisburg, Pa 17101

Thomas W. Snyder, Esq.
1801 California Street
Suite 4900
Denver, CO 80202

John O. Dudley, Esq.
212 Locust Street
P.O. Box 12060
Harrisburg, PA 17108

Kenneth A. Schifman, Esq.
6450 Sprint Parkway Disney A
Mailstop: KSOPHN0212
Overland Park, KS 66251-6105

Julie K. Orcino, Esq.
Sr. Regulatory Analyst
Pennsylvania, Inc.
11111 Sunset Hills Road
Reston, VA 20190

Bradford M. Stern, Esq.
Martin C. Rothfelder, Esq.
Rothfelder Stern LLC
625 Central Avenue
Westfield, NJ 17090

Gary Horewitz
2001 Edmund Halley Drive
Reston, VA 20191

Michele Thomas, Esq.
60 Wells Avenue
Newton, MA 02459

Michelle Painter, Esq.
22001 Loudoun County Parkway
C2-2-105
Ashburn, VA 20147

Mark J. Ashby, Sr.
Regulatory Counsel
5565 Glenridge Connector
Suite 1700
Atlanta, GA 30342

Christopher M. Arfaa, Esq.
Susan M. Roach, Esq.
Drinker Biddle & Reath LLP
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103

Lolita D. Forbes, Esq.
1300 I Street NW
Suite 400 West
Washington, DC 20005

John F. Povilaitis, Esq.
Ryan Russell Ogden Seitzer LLP
800 North Third Street, Suite 101
Harrisburg, PA 17102

Kristin L. Smith, Senior Attorney
1801 California Street, Suite 4900
Denver, CO 8022

Daniel Clearfield, Esq.
Alan C. Kohler, Esq.
Wolf Block Schorr & Solis-Cohen LLP
212 Locust Street, Suite 300
Harrisburg, PA 17101

Jennifer Duane, Esq.
401 9th Street NW
Suite 400
Washington, DC 20004

Susan Paiva, Esq.
Verizon Pennsylvania, Inc.
1717 Arch Street 32 N
Philadelphia, PA 19103

Mark A. Keiffer, Esq.
1120 20th Street NW
Washington, DC 20036



Pamela C. Polacek

Counsel to Broadband Cable
Association of Pennsylvania

Dated this 15th day April, 2005, in Harrisburg, Pennsylvania.



ORIGINAL

Zsuzsanna E. Benedek
Attorney

240 North Third Street, Suite 201
Harrisburg, PA 17101
Voice 717 236 1385
Fax 717 236 1389
sue.e.benedek@mail.sprint.com

April 15, 2005

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

DOCUMENT
FOLDER

PA PUC
SECRETARY'S BUREAU

2005 APR 15 PM 3:20

RECEIVED

**Re: Investigation Regarding Intrastate Access Charges and
IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania
Universal Service Fund – Docket No. I-00040105**

Dear Secretary McNulty:

On behalf of The United Telephone Company of Pennsylvania *d/b/a* Sprint
(hereinafter "Sprint") enclosed please find for filing an original and three (3) copies of
Sprint's Prehearing Memorandum.

BTL

A copy of this Prehearing Memorandum has been served upon all parties on the
attached Certificate of Service. Should you have any questions, please do not hesitate to
contact the undersigned.

Sincerely,

Sue Benedek

ZEB/jh

cc: The Honorable Susan Colwell (*via hand delivery*)
All Parties on Certificate of Service (*via electronic and first-class mail*)

37

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation Regarding Intrastate Access Charges and
IntraLATA Toll Rates of Rural Carriers, and the
Pennsylvania Universal Service Fund

)
)
)
)
)

RECEIVED
2005 APR 15 PM 3:20
SECRETARY'S BUREAU
Docket No. I-00040104U

PREHEARING MEMORANDUM OF
OF THE UNITED TELEPHONE COMPANY OF PENNSYLVANIA
d/b/a SPRINT

DOCUMENT
FOLDER

In accordance with the Second Prehearing Conference Order dated February 17, 2005, and the Commission's regulations, The United Telephone Company of Pennsylvania *d/b/a Sprint* ("Sprint") submits this Prehearing Memorandum to the presiding officer, Susan D. Colwell, and the parties identified on the service list accompanying the Second Prehearing Conference Order. In accordance with paragraph 1 of the February 17, 2005 Second Prehearing Conference Order, Sprint provides as follows:

DOCKETED
JUN 22 2005

History of the Proceeding

On December 20, 2004, the Commission entered an Order instituting an Investigation into whether there should be further intrastate access charge reductions and intraLATA toll rate reductions for the rural incumbent local exchange carriers and into the Pennsylvania Universal Service Fund ("USF").¹ Sprint is a rural incumbent local exchange carrier in Pennsylvania.²

¹ *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Order entered December 20, 2004.

² *Id.* at page 1, fn. 1.

The Commission's December 20, 2004 Order instituting this generic investigation included within the scope of this proceeding "all rate issues and rate changes which should or would result in the event that disbursements from the Fund are reduced in the future."³ In a footnote, the Commission indicated that this proceeding shall remain separate from the pending Verizon Pennsylvania Inc. and Verizon North Inc. (collectively "Verizon") access case.

The December 20, 2004 Order also provided that the "rate issues (access charge rates, toll rates, local service rates) should be addressed in a full, formal investigation before any formal changes to the regulations are proposed and moved through the regulatory process."⁴ The proceeding was assigned to the Office of Administrative Law Judge for appropriate proceedings, including a "fully developed analysis and recommendation" on six (6) questions identified by the Commission.

An initial in-person prehearing conference was held on February 16, 2005. A second further prehearing has been scheduled for April 21, 2005.

Issues

1. Commission Issues

The Second Prehearing Conference Order requests that parties provide intended position on the Commission's six (6) questions. Sprint provides initial responses to the Commission-identified issues below. Sprint reserves the right to amend and update this

³ *Id.* at page 4. *See also*, page 1 ("[I]n the event that . . . disbursements from the Pennsylvania Universal Service Fund (Fund) are reduced."). In another portion of the December 20, 2004 Order, the Commission defined the scope of the issues as including both possible reduction or elimination of USF disbursements. *Id.*, Order at pages 4-5 ("[T]o consider any and all rate issues and rate changes that should or would result in the event that disbursements from the Fund are reduced or eliminated.") (emphasis added).

⁴ *Id.* at 5.

position(s) on the Commission issues as litigation ensues or as may be necessary to protect Sprint's interests. At this juncture, therefore, Sprint responds as follows:

a. Whether intrastate access charges and intraLATA toll rates should be further reduced or rate structures modified in the rural ILECs' territories.

Sprint Response of 4/15/05: Sprint will take a position on this Commission question. As to the intrastate access charge component of this question, Sprint's intended position is that no reductions to access rates can be implemented for a local exchange telecommunications company except on a revenue neutral basis. 66 Pa.C.S. §3017(A). Moreover, any revenue neutral intrastate access reductions or other rate structure modifications should be moderated so as to minimize end user rate impact, while further eliminating implicit subsidies (most of which are explicitly identified in the Carrier Charge) and while addressing regulatory arbitrage. It is Sprint's intended position, at this time, that any further state access reform could be undertaken to complement anticipated federal intercarrier compensation reform underway by the FCC. Moderate rate rebalancing efforts toward an affordable end user residential rate may be accomplished pending FCC intercarrier compensation review. As to the intraLATA toll rate component of this question, Sprint's intended position will be that such rates, for Sprint, are competitive and not subject to rate regulation.

b. What rates are influenced by contributions to and/or disbursements from the Pennsylvania Universal Service Fund?

Sprint Response of 4/15/05: The *Global Order* linked Pennsylvania USF disbursements to the rates for rural ILEC intrastate access, rural ILEC-originated intraLATA toll, and rural ILEC basic local service. Sprint believes that continued reform of intrastate access and the USF should continue with revenue neutral rebalancing efforts as between basic local service and intrastate access charges, while utilizing the state USF as an integral vehicle for implementation of such rebalancing in a manner consistent with the public interest.

- c. **Should disbursements from the PA USF be reduced and/or eliminated as a matter of policy and/or law?**

Sprint Response of 4/15/05: Traditionally, the Commission's public policy supporting affordable universal service has driven rate restructuring in Pennsylvania. It is critical that the Commission continue a steady course, as discussed in responses to (a) and (b) above. Thus, disbursements from the PA USF should not be reduced or eliminated as a matter of policy and law. To the extent that intercarrier compensation review at the federal level impacts state policies concerning intrastate access rates and the state USF, those impacts should be factored into this Commission's determinations in this docket.

- d. **Assuming the PA USF expires on or about December 31, 2006, what action should the Commission take to advance the policies of the Commonwealth?**

Sprint Response of 4/15/05: Sprint's intended position remains that the PA USF does not automatically expire on December 31, 2006.

- e. **If the PA USF continues beyond December 31, 2006, should wireless carriers be included in the definition of contributions to the Fund? If included, how will the Commission know which wireless carriers to assess? Will the Commission need to require wireless carriers to register with the Commission? What would a wireless carrier's contribution be based on? Do wireless companies split their revenue bases by intrastate, and if not, will this be a problem?**

Sprint Response of 4/15/05: As the Presiding Judge is aware, a group of wireless carriers⁵ filed a motion questioning the Commission's jurisdiction to require CMRS providers to contribute to the Pennsylvania USF and for bifurcation or certification for immediate review. Sprint filed an answer to the Wireless Coalition on April 7, 2005. A determination of the wireless carriers' motion and request greatly impacts this response. Accordingly, Sprint is not prepared at this time to take an initial intended position on this question.

⁵ Omnipoint Communications Inc. *d/b/a* T-Mobile, Omnipoint Communications Enterprises LLC *d/b/a* T-Mobile, Voicestream Pittsburgh LP *d/b/a* T-Mobile, Nextel Communications, Inc. and Cellco Partnership *d/b/a* Verizon Wireless (collectively "Wireless Carriers").

- f. **What regulatory changes are necessary to 52 Pa. Code §§63.161-171 given the complex issues involved as well as recent legislative developments?**

Sprint Response of 4/15/05: Sprint is not prepared at this time to take an initial intended position on this question.

2. Additional Issues:

The Second Prehearing Conference Order also requests that parties provide a list of additional issues which are intended to be addressed in this proceeding and the intended position on each additional issue. Sprint reserves the right to amend and update its list of additional issues as litigation ensues or as may be necessary to protect Sprint's interests. At this juncture, therefore, Sprint responds as follows:

1. Federal Intercarrier Compensation Reform: As briefly addressed above, the FCC released its *Further Notice of Proposed Rulemaking* ("FNPRM"), as it adopted on February 10, 2005, on a comprehensive regime for intercarrier compensation to replace the current system of originating and terminating access charges, reciprocal compensation and universal service support (CC 01-92). That order was released after the Commission's December 20, 2004 ordering instituting this generic investigation. Comments to the FCC's FNPRM are due on or before May 23, 2005 with reply comments due on or before June 22, 2005.
Sprint's intended position: Moderate revenue neutral rebalancing to accomplish additional state access reform may be undertaken to complement federal intercarrier compensation reform. *See*, Sprint Response to (a) and (b), above. Sprint is unable to predict when the FCC

will issue an order implementing comprehensive intercarrier compensation reform. However, the schedule in the instant proceeding may be crafted such that parties are able to include the comments and reply comments submitted in the FNPRM, if necessary.

2. USF Contributions: Existing or potential opportunities for access arbitrage should be factored into the record adduced in this proceeding. Based on published reports, questions exist regarding AT&T's reporting of intrastate revenues for purposes its contribution(s) to the USF. AT&T may have caused improper calculations for all carriers contributing to the PA USF. (Intrastate revenue is used by the fund administrator in calculating the PA USF contribution assessments of all carriers.) It is necessary that this issue be resolved before any major modifications to the PA USF are implemented.

Witnesses

Sprint intends to make available at least one witness, who has not been designated at this time.

Discovery

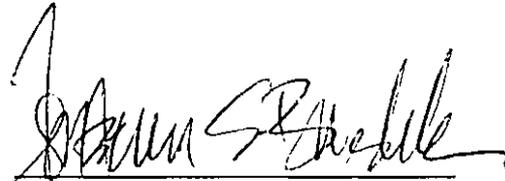
Assuming the wireless motion is addressed and/or resolved by the Presiding Judge or the Commission, Sprint intends to propound discovery requests. Sprint likely will be responding to discovery requests submitted by other parties. Given the broad scope of the issues identified thus far in the proceeding, the discovery process could

become comprehensive. At this point, Sprint is not willing to expedite the time period for responding to discovery responses.

Proposed Schedule

As addressed in Sprint's Answer to the Wireless Carriers' motion, Sprint supports certification of the wireless jurisdictional issue, which may require a limited stay of the instant proceeding. **Sprint does not support any unnecessary delay in the procedural schedule.** Sprint understands that a schedule may be proposed by the Rural Telephone Company Coalition ("RTCC") either at or prior to the second prehearing conference scheduled for April 21, 2005. The schedule being fashioned by the RTCC may accommodate resolution of the wireless jurisdictional issue. Sprint is willing to work with the other parties to fashion a workable procedural schedule.

Respectfully submitted,



Zsuzsanna E. Benedek, Esquire
240 North Third Street, Suite 201
Harrisburg, PA 17101
Direct Phone: (717) 245-6346
General Phone: (717) 236-1385
Fax: (717) 236-1389
E-mail: sue.e.benedek@mail.sprint.com

Counsel for The United Telephone
Company of Pennsylvania *d/b/a* Sprint

Dated: April 15, 2005

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation Regarding Intrastate Access :
Charges and IntraLATA Toll Rates of Rural : Docket No. I-00040105
Carriers, and the Pennsylvania Universal :
Service Fund :
: :
: :

RECEIVED
2005 APR 15 PM 3:20
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of April, served a true copy of the foregoing Prehearing Memorandum was served upon the persons below, via electronic and first-class mail, in accordance with the requirements of 52 Pa. Code §1.54:

Philip F. McClelland, Esquire
Joel H. Cheskis, Esquire
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101

Robert V. Eckenrod, Esquire
Pennsylvania Public Utility Commission
Office of Trial Staff
400 North Street, 2nd Floor
Harrisburg, PA 17120

Steven C. Gray, Esquire
Office of Small Business Advocate
300 North Second Street
Commerce Building, Suite 1102
Harrisburg, PA 17101

Bradford M. Stern, Esquire
Martin C. Rothfelder, Esquire
Rothfelder, Stern, LLC
625 Central Avenue
Westfield, NJ 07090

D. Mark Thomas, Esquire
Patricia Armstrong, Esquire
Thomas, Thomas, Armstrong and Niesen
212 Locust Street, Suite 500
Harrisburg, PA 17108

Daniel Clearfield, Esquire
Alan Kohler, Esquire
Wolf, Block, Schorr and Solis-Cohen, LLP
212 Locust Street, Suite 300
Harrisburg, PA 17101

Michelle Painter, Esquire
MCI
22001 Loudoun County Parkway,
C2-2-105
Ashburn, VA 20147

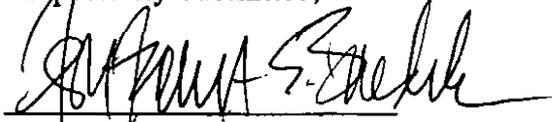
Julia A. Conover, Esquire
Suzan DeBusk Paiva, Esquire
Verizon Pennsylvania Inc.
1717 Arch Street, 32nd Floor
Philadelphia, PA 19103

Jennifer A. Duane, Esquire
Sprint
401 9th Street, NW, Suite 400
Washington, DC 20004

Christopher M. Arfaa, Esquire
Susan M. Roach, Esquire
Drinker, Biddle and Reath, LLP
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103

John M. Povilaitis, Esquire
Matthew A. Totino, Esquire
Ryan, Russell, Ogden & Seltzer, LLP
800 North Third Street, Suite 101
Harrisburg, PA 17102-2025

Respectfully Submitted,



Zsuzsanna E. Benedek, Esquire
The United Telephone Company
of Pennsylvania *d/b/a* Sprint
240 North Third Street, Suite 201
Harrisburg, PA 17101
Direct Phone: (717) 245-6346
Fax: (717) 236-1389
E-Mail: sue.e.benedek@mail.sprint.com

LAW OFFICES
RYAN, RUSSELL, OGDEN & SELTZER LLP

SUITE 101
800 NORTH THIRD STREET
HARRISBURG, PENNSYLVANIA 17102-2025

TELEPHONE: (717) 236-7714
FACSIMILE: (717) 236-7816
WWW.RYANRUSSELL.COM

WYOMISSING OFFICE
SUITE 330
1105 BERKSHIRE BOULEVARD
WYOMISSING, PENNSYLVANIA
19610-1222
TELEPHONE: (610) 372-4761
FACSIMILE: (610) 372-4177

DOCUMENT
FOLDER

April 15, 2005

ORIGINAL

VIA HAND DELIVERY

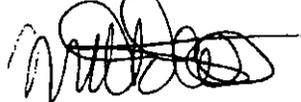
James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17102

Re: Investigation Regarding Intrastate Access Charges and IntraLATA
Toll Rates of Rural Carriers and the Pennsylvania Universal
Service Fund, Docket No. I-00040105

Dear Secretary McNulty:

Enclosed please find an original and three (3) copies of Qwest Communications Corporation's Second Prehearing Conference Memorandum in the above-captioned proceeding. Copies have been served in accordance with the attached Certificate of Service.

Very truly yours,



Matthew A. Totino

Enclosures
MAT/ck

c: Certificate of Service
The Honorable Susan D. Colwell

RECEIVED
2005 APR 15 AM 10:39
SECRETARY'S BUREAU

33

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation Regarding Intrastate Access :
Charges and IntraLATA Toll Rates of Rural : Docket No. I-00040105
Carriers, and the Pennsylvania Universal :
Service Fund :

**SECOND PREHEARING MEMORANDUM
OF QWEST COMMUNICATIONS CORPORATION**

**DOCUMENT
FOLDER**

To The Honorable Susan D. Colwell:

Pursuant to the Second Prehearing Conference Order issued in the above matter, Qwest Communications Corporation ("Qwest") submits this Second Prehearing Memorandum for purposes of the Prehearing Conference scheduled by the Administrative Law Judge ("ALJ") for Thursday, April 21, 2005 at 1:00 p.m.:

I. Name and Address of Complainant's Attorneys:

John F. Povilaitis
Matthew A. Totino
Ryan, Russell, Ogden & Seltzer LLP
800 North Third Street, Suite 101
Harrisburg, Pennsylvania 17102-2025
Phone: (717) 236-7714
Fax: (717) 236-7816
JPovilaitis@RyanRussell.com
MTotino@RyanRussell.com

Kristin L. Smith, Esquire
Senior Attorney - Regulatory
Qwest Communications Corporation
1801 California Street, 10th Floor
Denver, Colorado 80202
Phone (303) 383-6614
Fax (303) 298-8197
kristin.smith@qwest.com

RECEIVED
2005 APR 15 AM 10:39
SECRETARY'S BUREAU

DOCKETED
JUL 20 2005

Pursuant to 52 Pa. Code § 1.55 and the Second Prehearing Conference Order, John F. Povilaitis, Esquire and Kristin L. Smith, Esquire are authorized to accept service on behalf of Qwest in this matter, and Qwest respectfully requests that Kristin L. Smith, Esquire be added to the Pennsylvania Public Utility Commission's ("Commission") service list.

II. Procedural Background

On December 20, 2004, the Commission entered an Order in the above-captioned matter instituting an investigation into whether there should be further intrastate access charge reductions and intraLATA toll rate reductions in the service territories of rural incumbent local exchange carriers ("ILECs").¹ On or about January 13, 2005, the presiding ALJ issued a Prehearing Conference Order, which established a preliminary schedule for this proceeding. On February 11, 2005, parties filed their prehearing memoranda. On February 16, 2005, the presiding ALJ held a prehearing conference in Hearing Room #1 of the Commonwealth Keystone Building in Harrisburg, Pennsylvania.

At the initial prehearing conference, the Rural Telephone Company Coalition ("RTCC") requested time to meet with the other parties before a formal schedule was set in order to conduct settlement negotiations or, in the least, to fine-tune

¹ There are approximately 32 rural ILECs operating in Pennsylvania. For purposes of this investigation, the Commission included Sprint/United as a rural ILEC. The Commission's investigation into access charge reform for the rural ILECs follows the access charge reductions ordered in the Verizon PA and Verizon North territories. See *AT&T Communications of Pennsylvania, Inc. v. Verizon North, Inc.*, C-20027195, Order (July 28, 2004). In the July 28, 2004 Order, the Commission essentially established parity between Verizon PA and Verizon North's existing Traffic Sensitive Access Charges and the Carrier Charge rate per minute without a significant rate increase on residential and business local exchange customers. The Commission viewed the Petition as phase one of access charge reform in Pennsylvania and remanded the matter back to the OALJ for consideration of further access charge reform. Access charges are expected to be reduced in Verizon PA's and Verizon North's territories in February, 2005, and the Commission has directed that the remand proceeding occur in an expedient manner. See *AT&T Communications of Pennsylvania, Inc. v. Verizon North, Inc.*, C-20027195, Order (January 18, 2005).

issues for investigation. No party objected to the request and therefore, a second prehearing conference was scheduled. As per the Second Prehearing Conference Order, Your Honor directed that the parties provide another prehearing conference memorandum which, in addition to the requirements appearing in the Commission's regulations, must include a statement of the party's intended position on six issues. Accordingly, Qwest submits this Second Prehearing Memorandum to outline its Statement of Intended Position on the Issues.

III. Statement of Intended Position on the Issues

Qwest submits the following positions on the issues posed by the ALJ:

a. Whether intrastate access charges and intraLATA toll rates should be further reduced or rate structures modified in the rural ILECs' territories.

Qwest asserts that the Commission should reduce intrastate access charges of the rural ILECs to parity with their interstate access charges in a revenue-neutral, and competitively-neutral manner. The Fund in Pennsylvania creates a unique problem for IXCs. Any reduction in intrastate access charges is not realized due to the fact that IXCs must contribute to the Fund but have no mechanism for recovery of those costs. Although access charges may be reduced, the increased contribution to the fund without ability to recover those costs negates the benefit to IXCs. Therefore, Qwest proposes that the Fund in Pennsylvania be allowed to expire, or at the very least be restructured as detailed in response (d.).

b. What rates are influenced by contributions to and/or disbursements from the Fund?

The local rates of the rural ILECs remain low through disbursements from the Fund. Alternatively, Qwest's interexchange rates are higher nationwide due to the contributions to the Fund in Pennsylvania that are non-recoverable because Pennsylvania is one of the few states prohibiting Fund payments to be passed through to the Pennsylvania customer. Instead, Qwest must absorb the cost of this contribution, and disperse that cost among all of its customers nationwide.

c. Should disbursements from the Fund be reduced and/or eliminated as a matter of policy and/or law?

If the Commission insists on maintaining the Fund, Qwest proposes the following:

1. Set a reasonable minimum benchmark for local service rates that rural ILECs must transition to in order to offset any intrastate access charge reductions.
2. Once this benchmark is met, any unrecovered revenue-neutral offset would be derived from a restructured state Fund, as detailed in Qwest's response to (d.).

d. Assuming the Fund expires on or about December 31, 2006, what action should the Commission take to advance the policies of this Commonwealth?

If a rural ILEC Fund is needed at all, it must be restructured. Because the Fund does not permit IXCs to recover their contributions directly from their Pennsylvania end-user customers, contributions to the Fund are nothing more than an extension of the carrier-to-carrier subsidy current provided through the high intrastate access charges of the rural ILECs in Pennsylvania. Accordingly, the Commission should advance the policies of this Commonwealth by restructuring the Fund to allow IXCs to recover their contributions into the Fund from their Pennsylvania end user customers. Otherwise, Qwest advocates that the Commission should let the Fund expire.

The Commission should also ensure that rural ILECs provide an assessment of the extent to which the Federal USF Fund contributes to their state revenue requirement. Because the Federal USF contributions work to also offset rural ILECs state revenue requirements, the Commission should ensure these federal contributions are accounted for in any state fund requirements. This will ensure that rural ILECs are recovering their revenue requirements once and validate that double recovery is not occurring via a state fund.

e. If the Fund continues beyond December 31, 2006, should wireless carriers be included in the definition of contributors to the Fund? If included, how will the Commission know which wireless carriers to assess? Will the Commission need to require wireless carriers to register with the Commission? What would a wireless carrier's contribution be based on? Do wireless companies split their revenue bases by intrastate, and if not, will this be a problem?

To ensure consistency with the federal requirements and competitive neutrality in the industry, Qwest contends that wireless carriers should be included in the definition of telecommunications carriers required to contribute to the Fund, if the Fund is to be continued beyond 12/31/06. All wireless carriers offering service within the Commonwealth of Pennsylvania should be included. Wireless carriers contribute to other established state USF funds across the nation and therefore, have mechanisms in place to determine and allocate state revenues.

f. What regulatory changes are necessary to 52 Pa. Code §§ 63.161-63.171 given the complex issues involved as well as recent legislative developments?

The restructuring to the Fund proposed by Qwest in its response to (d.) is consistent with the recent legislative developments, namely, the passage of Act 183 in Pennsylvania,² which removed the Commission's oversight of interexchange pricing. Without this oversight, the Commission cannot continue to restrict IXCs from obtaining reimbursement of the Fund contributions from their Pennsylvania customers.

IV. Proposed Witnesses

At this time, Qwest still has not finalized its exact witness or witnesses on the subject matter of the testimony to be presented at hearing. The witnesses utilized by Qwest may vary and may be impacted by the issues other parties intend to raise in this case. Qwest will provide the identity of the witnesses to the presiding ALJ and all parties in the proceeding when such information is finalized.

V. Proposed Schedule

Qwest is willing to work with the presiding ALJ and the other parties in the proceeding to establish a reasonable procedural schedule.

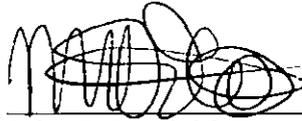
² P.L. 1398, 66 Pa. C.S. § 3011, et seq. For the removal of the Commission's oversight with respect to IXC rates, see 66 Pa. C.S. § 3018.

VI. Settlement

Qwest is willing to participate in any settlement or stipulation discussions with the other parties in the proceeding to narrow or eliminate issues in the proceeding.

Dated: April 15, 2005

Respectfully submitted,



John F. Povilaitis
Matthew A. Totino
RYAN, RUSSELL, OGDEN & SELTZER LLP
800 North Third Street, Suite 101
Harrisburg, PA 17102-2025
Phone: (717) 236-7714
Fax: (717) 236-7816
JPovilaitis@RyanRussell.com
MTotino@RyanRussell.com

Kristin L. Smith, Esquire
Senior Attorney - Regulatory
Qwest Communications Corporation
1801 California Street, 10th Floor
Denver, Colorado 80202
Phone (303) 383-6614
Fax (303) 298-8197
kristin.smith@qwest.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation Regarding Intrastate Access :
Charges and IntraLATA Toll Rates of Rural :
Carriers and the Pennsylvania Universal :
Service Fund : Docket No. I-00040105
:

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document(s) in accordance with the requirements of 52 Pa. Code § 1.54 et seq. (relating to service by a participant).

VIA FIRST CLASS MAIL

Philip F. McClelland, Esquire
Joel H. Cheskis, Esquire
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg PA 17101-1923
(717) 783-5048
JCheskis@paoca.org

Robert V. Eckenrod, Esquire
Pa. Public Utility Commission
Office of Trial Staff
P.O. Box 3265
Harrisburg PA 17105-3265
roeckenrod@state.pa.us
(717) 787-1976

Steven C. Gray, Esquire
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg PA 17101
(717) 783-2525
sgray@state.pa.us

Zsuzanna E. Benedek, Esquire
The United Telephone Company of
Pennsylvania d/b/a Sprint
240 North Third Street, Suite 201
Harrisburg PA 17101
sue.e.benedek@mail.sprint.com
(717) 245-6346

RECEIVED
2005 APR 15 AM 10:39
SECRETARY'S BUREAU

Patricia Armstrong, Esquire
D. Mark Thomas, Esquire
Thomas, Thomas, Armstrong & Niesen
212 Locust Street, Suite 500
Harrisburg PA 17108-9500
parmstrong@ttanlaw.com
(717) 255-7600
Rural Telephone Company Coalition

Michelle Painter, Esquire
MCI
22001 Loudoun County Parkway, C2-2-105
Ashburn VA 20147
Michelle.Painter@mci.com
(703) 886-5973

Julia A. Conover, Esquire
Suzan DeBusk Paiva, Esquire
Verizon
1717 Arch Street, 32nd Floor
Philadelphia PA 19103
Julia.a.conover@verizon.com
Suzan.d.paiva@verizon.com
(215) 963-6001 or 6068

Christopher M. Arfaa, Esquire
Susan M. Roach, Esquire
Drinker Biddle & Reath LLP
One Logan Square
18th & Cherry Streets
Philadelphia PA 19103
christopher.arfaa@dbr.com
susan.roach@dbr.com
(215) 988-2700
Cingular Wireless LLC
Cellco Partnership d/b/a Verizon Wireless

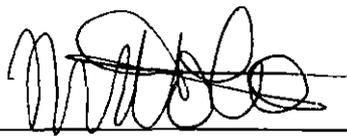
Bradford M. Stern, Esquire
Martin C. Rothfelder, Esquire
Rothfelder Stern, L.L.C.
625 Central Avenue
Westfield, N.J. 07090
bmstern@rothfelderstern.com
(908) 301-1211
Omnipointe Communications Inc. d/b/a
T-Mobile; Omnipointe Communications Inc.
d/b/a T-Mobile and Voicestream Pittsburgh
LP d/b/a T-Mobile
Nextel Communications Inc.

Daniel Clearfield, Esquire
Alan C. Kohler, Esquire
Wolf Block Schorr Solis-Cohen LLP
212 Locust Street, Suite 300
Harrisburg PA 17101
dclearfield@wolfblock.com
(717) 237-7172

John F. Povilaitis, Esquire
Matthew A. Totino, Esquire
Ryan, Russell, Ogden & Seltzer, LLP
800 North Third Street, Suite 101
Harrisburg PA 17102-2025
JPovilaitis@RyanRussell.com
(717) 236-7714
Qwest Communications Corporation

Jennifer A. Duane, Esquire
Sprint Communications Company, L.P.
401 9th Street, NW
Suite 400
Washington, DC 20004
Jennifer.A.Duane@mail.sprint.com
(202) 585-1937
(202) 585-1894
The United Telephone Company of
Pennsylvania d/b/a/ Sprint

Date: April 15, 2005



John F. Povilaitis

Matthew A. Totino

RYAN, RUSSELL, OGDEN & SELTZER LLP

800 North Third Street, Suite 101

Harrisburg, PA 17102-2025

Phone: (717) 236-7714

Fax: (717) 236-7816

Email: JPovilaitis@RyanRussell.com

Counsel for Qwest Communications Corporation

ORIGINAL



April 15, 2005

Via Overnight Delivery

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Investigation Regarding Intrastate Access Charges and IntraLATA
Toll Rates of Rural Carriers, and the Pennsylvania Universal
Service Fund, Docket No. I-00040105

Dear Mr. McNulty:

Please find enclosed an original and three (3) copies of a Second Prehearing Memorandum on behalf of MCImetro Access Transmission Services, LLC in the above referenced case.

Please contact me if you have any questions or concerns with this filing.

DOCUMENT
FOLDER

Very truly yours,


Michelle Painter

Enclosure

cc: The Honorable Susan D. Colwell
Service List (as noted)

64

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation Regarding Intrastate Access :
Charges and IntraLATA Toll Rates of : Docket No. I-00040105
Rural Carriers, and the Pennsylvania :
Universal Service Fund :

**SECOND PREHEARING MEMORANDUM OF
MCImetro ACCESS TRANSMISSION SERVICES LLC**

DOCUMENT
FOLDER

Pursuant to the February 17, 2005 Second Prehearing Conference Order,
MCImetro Access Transmission Services, LLC ("MCI") hereby files this Second
Prehearing Memorandum in the above-captioned matter.

I. ISSUES

DOCKETED
JUL 20 2005

At the request of Administrative Law Judge Colwell, MCI provides its
preliminary positions on the below issues:¹

1. Whether intrastate access charges and intraLATA toll rates should be further reduced or rate structures modified in the rural ILECs' territories.

MCI Position: Intrastate access rates do need to be further reduced. The intrastate access rates remain artificially high, and must be reduced closer to cost-based levels.

MCI does not intend to argue that intraLATA toll rates should be modified by the Commission at this time. MCI just received information from the rural ILECs about their current access rates, number of lines served and current average retail rates. Once MCI reviews this data, it will likely have more details about its proposals regarding the manner

¹ At this time, MCI is not aware of any additional issues beyond those listed below that MCI will address in this matter.

in which access rate structures and access rates should be modified, and MCI will present such details in its testimony

2. What rates are influenced by contributions to and/or disbursements from the Pennsylvania Universal Service Fund?

MCI Position: All retail rates may be influenced by contributions to and/or disbursements from the Pennsylvania USF. To the extent that carriers are contributors to the fund, their retail and wholesale rates may be increased, albeit indirectly. To the extent that carriers take from the fund, presumably the carriers use such disbursements to offset prudently incurred cost and maintain reduced retail rates. These are issues that will need to be explored further through discovery and additional testimony. See also MCI's responses to the remaining questions.

3. Should disbursements from the PA USF be reduced and/or eliminated as a matter of policy and/or law?

MCI Position: As MCI stated in its initial Prehearing Memorandum, the entire manner of subsidizing telecommunications carriers must be re-evaluated. In light of the substantial changes to the telecommunications industry over recent years, the Commission must move in a new direction and recognize that changes should be made to the way in which the industry is regulated. This includes modifying the practice of providing implicit subsidies, such as above cost switched access rates. As part of this re-evaluation, the Commission should also assess the overall objective, as well as the means of funding, of the PA USF.

For example, the structure of the existing fund has the effect of transferring revenues between carriers, and is therefore likely not a reasonable mechanism for

ensuring that the desired *end users* obtain the intended benefit. To better ensure that the goal – benefiting the targeted consumer – is achieved, the fund should be restructured so that distributions target the “demand side” – i.e. consumers. In such a system, the consumer could use funding to select the service provider that they feel best meets their needs without regard to the technology used by the provider.

Concerns over whether or not amounts withdrawn from the fund are used for basic service are not satisfactorily addressed by the manner in which the state USF is currently implemented. The disbursements are tied to an ILEC’s historical revenue and an unsubstantiated assumption that the ILEC must maintain that level of revenue to provide affordable basic service to its residential customers.

This concern could be resolved if universal service funding was provided to Pennsylvania consumers instead of being provided to carriers. If consumers directly received the funding, they could vote with their pocketbooks and let the best service provider win.

MCI supports a USF that is based on the following principles:

- The contribution methodology should not give one vendor of service a competitive advantage over another vendor of an equivalent service. All similar platforms should be treated in an equitable and non-discriminatory manner.
- The mechanism should create the maximum amount of stability in the amount of the fee carriers impose on customers to collect USF contributions over time (i.e., should not rise over time).
- Carriers should be permitted to pass any such assessment through, dollar-for-dollar, to the customer that caused the carrier to incur the contribution obligation.

As part of the Intercarrier Compensation Forum, MCI, along with other carriers, has proposed a funding methodology that is “based on the number of Unique Working Telephone Numbers a service provider uses for retail services, as well as certain network access connections.” MCI intends to provide further details about this proposal in its testimony in this case.

4. Assuming the USF expires on or about December 31, 2006, what action should the Commission take to advance the policies of the Commonwealth?

MCI Position: The Commission must do a better job of assessing actual need for universal service funds. A policy of simply assuming that a carrier must maintain its current level of revenues is not a policy that is necessarily consistent with ensuring universal service. Further, it is no longer reasonable, equitable or sustainable to have some carriers subsidizing the services of other carriers. To the extent that universal service funding continues, see MCI’s response to #3.

5. If the PA USF continues beyond December 31, 2006, should wireless carriers be included in the definition of the contributors to the Fund? If included, how will the Commission know which wireless carriers to assess? Will the Commission need to require wireless carriers to register with the Commission? What would a wireless carrier’s contribution be based on? Do wireless companies split their revenue bases by intrastate, and if not, will this be a problem?

MCI Position: Universal service funding should be recovered from as broad of a base as possible, and should be done in a manner so that no one entity or serving technology bears a disproportionate burden. These principles can minimize the negative impacts on economic efficiency should the Commission deem it necessary to continue a fund.

While it would be economically beneficial to increase the base of entities that contribute to the state USF, it is more important that the funding be restructured so that it can be made sustainable and can achieve its designated purposes. The question regarding whether or not new technologies should be added to the list of services or technologies funding the state USF illustrates a problem with the structure of the state USF. Placing a social funding requirement, such as the state USF, on a particular technology or service type encourages gaming the system in ways designed simply to avoid funding obligations. In addition, new technologies and substitutable services undoubtedly will continue to be developed. As such, a universal service funding mechanism based on type of service or technology is not sustainable.

To the extent state universal service funding is necessary, the state USF could be restructured to a connections based approach. A connections based approach would obtain revenue for universal service funding from “first mile” providers based on the number of connections each provider has with customers. This type of approach would be sustainable because, in the end, no matter what technology is used, eventually and somehow that technology must be connected to the customer.

The concepts of interstate versus intrastate jurisdictions are becoming anachronisms. For example, cellular users purchase a “bucket” of minutes that can be used to make what once were considered “local,” “intrastate” or “interstate” calls without such distinction. Similarly, flat-rate plans offered by wireline providers do not distinguish minutes along traditional jurisdictions. As such, a USF funding mechanism based on the jurisdictional nature of traffic cannot be sustained in an environment where such distinctions are no longer maintained. Funding universal service initiatives from a

connections based approach would eliminate the need to answer questions regarding the wireless carriers' contributions and interstate versus intrastate issues.

6. What regulatory changes are necessary to 52 Pa. Code §§63.161-171 given the complex issues involved as well as recent legislative developments?

MCI Position: The regulations would need to be completely re-written if this Commission substantially modifies the current method of universal funding, as MCI intends to propose. Until the parties know the changes this Commission makes to the funding mechanism, it is impossible to know how the regulations will have to change.

II. WITNESSES

At this time, MCI has not yet identified a witness to testify in this case, but will notify the parties when MCI's witness or witnesses are determined.

III. SCHEDULE

MCI will work with the parties to develop a mutually acceptable schedule in this matter. The parties have discussed a tentative schedule among themselves. MCI understands that initial testimony may be due in mid-late July 2005. That is satisfactory to MCI, however, it is MCI's position that any schedule should ensure that this Commission can make a final decision in this matter by the end of this calendar year. There is no reason to delay this case, and the Commission should not await action from the FCC given that there is no guarantee as to when the FCC will act or issue a final decision.

IV. SETTLEMENT

MCI will continue to work with the parties in an effort to amicably resolve this matter.

V. DISCOVERY

MCI proposes that discovery response times be reduced. Specifically, MCI proposes that discovery responses be due within ten (10) calendar days of service. Objections to discovery should be due within seven (7) calendar days of service.

VI. METHOD OF SERVICE

MCI proposes that parties serve all documents via e-mail, followed by a hard copy via overnight delivery.

Respectfully Submitted,



Michelle Painter, Esq.

MCI

22001 Loudoun County Parkway, C2-2-105

Ashburn, VA 20147

(703) 886-5973

(703) 886-0633 -- facsimile

E-mail: Michelle.Painter@mci.com

Dated: April 15, 2005

SERVICE LIST

I hereby certify that I have this day caused a true copy of MCI's Prehearing Memorandum and MCI's Letter regarding the Wireless Carriers' Motion to be served upon the parties of record in Docket No. I-00040105 in accordance with the requirements of 52 Pa. Code Sections 1.52 and 1.54 in the manner and upon the parties listed below.

Dated in Harrisburg, PA on April 15, 2005

VIA E-MAIL AND FIRST CLASS MAIL

Philip F. McClelland, Esquire
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg PA 17101-1923
(717) 783-5048

Steven C. Gray, Esquire
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg PA 17101
(717) 783-2525

Robert V. Eckenrod, Esquire
Pa. Public Utility Commission
Office of Trial Staff
400 North St.
Harrisburg PA 17105-3265
(717) 787-1976

Sue Benedek, Esquire
The United Telephone Company of
Pennsylvania d/b/a Sprint
240 North Third Street, Suite 201
Harrisburg PA 17101
(717) 245-6346

Patricia Armstrong, Esquire
Thomas, Thomas, Armstrong & Niesen
212 Locust Street, Suite 500
Harrisburg PA 17108-9500
(717) 255-7600

Bradford M. Stern, Esquire
Rothfelder Stern, L.L.C.
625 Central Avenue
Westfield, N.J. 07090
(908) 301-1211.

Julia A. Conover, Esquire
Verizon
1717 Arch Street, 32nd Floor
Philadelphia PA 19103
(215) 963-6001

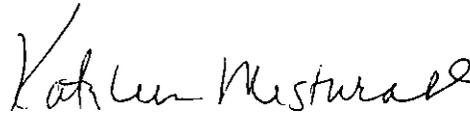
John F. Povilaitis, Esquire
Ryan, Russell, Ogden & Seltzer, LLP
800 North Third Street, Suite 101
Harrisburg PA 17102-2025
(717) 236-7714

Christopher M. Arfaa, Esquire
Drinker Biddle & Reath LLP
One Logan Square
18th & Cherry Streets
Philadelphia PA 19103
(215) 988-2700

Daniel Clearfield, Esquire
Wolf Block Schorr Solis-Cohen LLP
212 Locust Street, Suite 300
Harrisburg PA 17101

ORIGINAL

Kristin Smith
Qwest Communications
1801 California St, Suite 4900
Denver, CO 80202



Kathleen Misturak-Gingrich

ORIGINAL

WolfBlock

212 Locust Street, Suite 300, Harrisburg, Pennsylvania 17101
Tel: (717) 237-7160 □ Fax: (717) 237-7161 □ www.WolfBlock.com

Alan C. Kohler
Direct Dial: (717) 237-7172
Direct Fax: (717) 237-2752
E-mail: akohler@wolfblock.com

April 15, 2005

VIA HAND DELIVERY

James McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg., 2nd Flr.
400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

DOCUMENT
FOLDER

SECRETARY'S BUREAU

2005 APR 15 PM 3:20

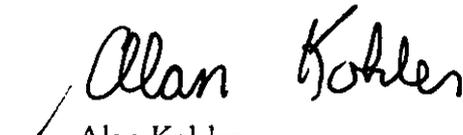
RECEIVED

Re: Investigation Regarding Intrastate Access Charges and
IntraLATA Toll Rates of Rural Carriers, and the
Pennsylvania Universal Service Fund
Docket No. I-00040105

Dear Secretary McNulty:

On behalf of AT&T Communications of Pennsylvania, L.L.C., enclosed for filing please find an original and three copies of its Prehearing Memorandum with regard to the above referenced matter. All Parties have been served in accordance with the attached Certificate of Service.

Respectfully submitted,


Alan Kohler
For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

ACK/cll
Enclosure

cc: Susan D. Colwell, Administrative Law Judge (w/enc)
Attached Certificate of Service

HAR:58534.1/ATT004-225580

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a true copy of AT&T Communications of Pennsylvania, LLC's Prehearing Memorandum to be served via first class mail upon the following persons:

Patricia Armstrong
Dr. Mark Thomas
Thomas Thomas Armstrong & Niesen
212 Locust Street, Suite 500
Harrisburg, PA 17108

Philip F. McClelland, Esquire
Joel H. Cheskis, Esquire
Office of Attorney General
Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, PA 17101

Steven C. Gray, Esquire
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

Robert V. Eckenrod, Esquire
Pa. Public Utility Commission
Office of Trial Staff
P. O. Box 3265
Harrisburg, PA 17105-3265

Bradford M. Stern, Esquire
Martin C. Rothfelder, Esquire
Rothfelder Stern LLC
625 Central Avenue
Westfield, NJ 07090

Michelle Painter, Esquire
MCI
22001 Loudon County Parkway, C2-2-105
Ashburn, VA 20147

Zsuzanna E. Benedek
The United Telephone Company
of Pennsylvania d/b/a Sprint
240 North Third Street, Suite 201
Harrisburg, PA 17101

Julia A. Conover, Esquire
Suzan DeBusk Paiva, Esquire
Verizon
1717 Arch Street, 32nd Floor
Philadelphia, PA 19103

John F. Povilaitis, Esquire
Matthew A. Totino, Esquire
Ryan, Russell, Ogden & Seltzer LLP
800 North Third Street, Suite 101
Harrisburg, PA 17102-2025

Christopher M. Arfaa, Esquire
Susan M. Roach, Esquire
Drinker Biddle & Reath LLP
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103

SECRETARY'S BUREAU
2005 APR 15 PM 3:20
RECEIVED

Jennifer A. Duane, Esquire
Sprint Communications Company, LP
401 9th Street, NW
Washington, DC 20004

Alan Kohler

Alan C. Kohler

Date: April 15, 2005

THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SECRETARY'S BUREAU

2005 APR 15 PM 3:20

RECEIVED

Investigation Regarding Intrastate Access
Charges and IntraLATA Toll Rates of Rural
Carriers, and the Pennsylvania Universal
Service Fund

Docket No. I-00040105

DOCUMENT
FOLDER

**AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC'S
PREHEARING MEMORANDUM**

AT&T Communications of Pennsylvania, L.L.C. ("AT&T") submits this Prehearing Memorandum in the above-captioned matter in accordance with Administrative Law Judge Susan D. Colwell's February 17, 2005 Second Prehearing Conference Order.

1. Statement Of AT&T's Intended Positions.

AT&T provides its intended positions on the issues addressed in the Second Prehearing Order as follows:

- a. Whether intrastate access charges and intraLATA toll rates should be further reduced or rate structures modified in the rural ILECs' territories.

Intrastate access charges must be reduced to cost-based levels to eliminate implicit subsidies which are currently embedded in intrastate access charges. Interexchange carriers and the interexchange market can no longer bear the burden imposed by above-cost exchange access rates, particularly when those carriers, including AT&T, compete directly with the incumbent carrier, or its affiliates, in the provision of intrastate toll services. Because the incumbent does not have to pay its own access rates, continuation of such a subsidy causes a competitive disadvantage which distorts the market and penalizes other carriers. Such exorbitant access charges also impose costs on carriers which can not be recovered in the marketplace. Such a situation cannot be maintained and timely reform is critical.

DOCKETED
JUL 20 2005

Also, the high access charges continue to place interexchange carriers at competitive disadvantage relative to the wireless carriers. Thanks to a confluence of technology, markets, and regulatory policy, wireless providers have emerged as a formidable toll and long distance competitor. This development is not because these providers offer any better service quality than traditional landline competitors. Instead it is directly attributable to the fact that wireless providers do not have to pay access charges to terminate their calls. Instead, wireless carriers pay extremely low reciprocal compensation rates, rather than access charges, to terminate calls within a given major trading area ("MTA"), an area usually much larger than a LATA. This ability of wireless carriers to terminate calls anywhere within these very large areas at virtually no cost is what gives the wireless carriers the ability to advertise "free long distance" and that "any call is like a local call." So long as wireless carriers can terminate calls essentially for free and AT&T and other IXC's have to pay Rural ILEC's subsidy-laden access rates, then AT&T and the IXC's are being put at a severe, regulatory-created handicap. They are being squeezed out of the market, not because their service is poor or their networks inadequate, but rather because of antiquated and outmoded regulatory policies that permit wireless providers in Pennsylvania to enjoy a price advantage over competing wireline toll service providers. Wireless providers have exploited this advantage to capture market share at the expense of landline providers, a trend which is expected to continue over time.¹ Additionally, Voice over Internet Protocol ("VoIP")

¹ The FCC's 2003 CMRS competition report found that wireless providers had already captured 30 percent of both the minutes of use and revenues of the entire telecommunications industry. Given the current trend, the wireless sector is poised to capture an even larger share in the near future. In the same timeframe, the wireless penetration rate in Pennsylvania today has reached ??about 50-59% and continues to climb, which will bring additional pressure upon the landline carriers' minutes and revenues. See *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget and Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Service*, WT Docket No. 02-379. Eighth Report rel., July 14, 2003. ¶ 103.

and virtual foreign exchange ("VFX") services are growing in popularity for the same reason as wireless services -- these providers are not forced to pay subsidy-laden access charges to terminate toll services that compete with landline carrier toll services, and therefore can price their services at much lower rates. When you consider that the Rural ILEC landline services do not recover the sum of their production costs and imputed access charges, it is not difficult to see how an outmoded regulatory policy has skewed the market in favor of some providers and against AT&T, MCI and other traditional landline IXCs, to the detriment of these carriers and Pennsylvania consumers alike. It should not be that way. The PUC should step up quickly to reduce Rural ILEC's access charges to cost for all service providers in order to restore competitive balance to this market.

To the contrary, intrastate toll rates pertain to a completely competitive telecommunications market and should be set by market forces, not regulation.

- b. What rates are influenced by contributions to and/or disbursements from the Pennsylvania Universal Service Fund.

Contributors to the Pennsylvania Universal Service Fund incur costs on all contributions which must be recovered from all of a carrier's customers through the rates for service charged to each customer. Because 52 Pa. Code § 63.170 precludes recovery of PA USF contributions through an end user surcharge, carriers have no choice but to recover those costs through all of the carriers rates, assuming recovery is even possible.

- c. Should Disbursements From The PA USF Be Reduced And/Or Eliminated As A Matter Of Policy And/Or Law?

Contributions to the USF and the USF itself should be reduced and then eliminated over time. The USF is intended as a transitional mechanism from an access regime which subsidizes other services (and, in particular, local service) to a cost-based access regime. Because USF

contributions have their own competitive impacts, and are a transitional, not a permanent, funding mechanism, USF contributions should be decreased and then eliminated.

- d. Assuming The PA USF Expires On Or About December 31, 2006, What Action Should The Commonwealth Take To Advance The Policies Of The Commonwealth?

The Commission should reduce all exchange access rates to cost-based rates. This is a project the Commission has been engaged in over a period of almost ten years. Furthermore, the PA USF has been operative as a transitional mechanism for almost five years. It is time for the Commission to phase out the USF transitional mechanism, reduce access rates to cost and trust the competitive market to deliver reasonable service to customers at just and reasonable rates.

- e. If the PA USF Continues Beyond December 31, 2006, Should Wireless Carriers be Included in the Definition of Contributors to the Fund? If Included, How Will the Commission Know Which Wireless Carriers to Assess? Will the Commission Need to Require Wireless Carriers to Register With the Commission? What Would a Wireless Carrier's Contribution Be Based On? Do Wireless Companies Split Their Revenue Bases by Intrastate, and if not, Will This Be a Problem?

Yes. It is inequitable and anticompetitive for Wireless Carriers to evade USF contributions.² There may be a number of ways to identify wireless carrier contributors, but certainly a registration process could be adopted as an effective mechanism which does not impose any unreasonable regulatory burden on wireless carriers. Wireless carriers must differentiate between intrastate and interstate revenues in determining the contribution base for federal universal service obligations which are based on interstate revenues and a proper allocation should not be problematic. [NOTE: SOME MTA COVER MORE THAN ONE STATE, SO IT MAY BE DIFFICULT TO DETERMINE WHAT IS INTRA VS INTER STATE].

² See, AT&T's April 7, 2005 Answer to Wireless Carriers' Motion.

- f. What regulatory changes are necessary to 52 Pa. Code §§ 63.161-171 given the complex issues involved as well as recent legislative developments?

The regulations should be amended to phase out and then eliminate the USF, and require all telecommunications carriers, including wireless carriers, to contribute in the meantime. AT&T may recommend other modifications to the regulations but will do so through the submission of its testimony.

2. A List Of Additional Issues Which The Party Intends To Address In This Proceeding, And The Parties' Intended Position Regarding Each One.

AT&T believes its answers to the ALJ's questions cover the major policy issues which it intends to address in this proceeding.

3. Recommendations Regarding Discovery.

AT&T is amendable to abbreviated discovery procedures depending on the schedule which is ultimately adopted.

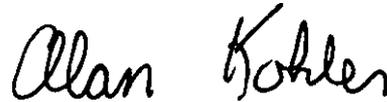
4. A Proposed Schedule for Submission of Testimony, Hearings, and Briefing.

The Parties held a conference on March 14, 2005, and discussed scheduling matters including a proposal by the Rural Telephone Carrier Coalition. While scheduling matters were not resolved, the parties made progress and believe that a consensus schedule can be reached by the time of the Prehearing Conference. Accordingly, AT&T will not submit a proposed schedule which competes with the RTCC proposed schedule at this time, but instead will work with the parties towards a consensus schedule.

5. Other Issues

Other issues have been addressed in AT&T's February 11, 2005 Prehearing Memorandum and remain accurate.

Respectfully submitted,



Daniel Clearfield
Alan Kohler
Wolf, Block, Schorr And Solis-Cohen LLP
212 Locust Street, Suite 300
Harrisburg, PA 17101
(717) 237-7172

Of Counsel:
Robert C. Barber, Esquire
AT&T Communications of PA, Inc.
3033 Chain Bridge Road
Oakton, VA 22185

Date: April 15, 2005